

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





76-1291

**United States Court of Appeals**

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

—v.—

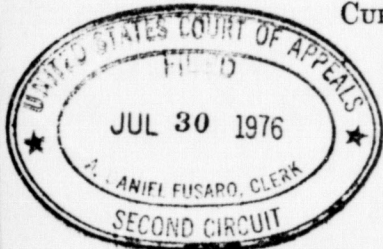
JEROME RAPOPORT,

*B*  
*P/S*  
Appellee,

Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

**APPELLANT'S APPENDIX**



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Pagination as in original copy

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### **Relevant Docket Entries Under Rule 30(a)**

- 12- 3-74 Filed indictment 74 Cr. 1141.
- 5- 5-75 Jury empaneled and sworn. Trial begun before Metzner, J.
- 5-13-75 Trial continued and concluded. Jury disagreement. Court declares mistrial. Metzner, J.
- 6-19-75 Filed indictment 75 Cr. 609. (Superseding 74 Cr. 1141 and referred to Metzner, J.)
- 10-20-75 Jury empaneled and sworn. Trial begun before Metzner, J.
- 10-29-75 Trial continued and concluded. Jury disagreement. Court declares mistrial. Metzner, J.
- 12-23-75 Filed indictment 75 Cr. 1246. Referred to Judge Brieant as a related and superseding indictment to 75 Cr. 609. Knapp, J.
- 1-12-76 Defendant Jerome Rapoport (attorney Eliot Lauer) pleads Not Guilty. Bail ROR (continued). Referred to Brieant, J. for all purposes. Bonsal, J.
- 4-12-76 Defendant (attorney present) Jury trial begun.
- 4-21-76 Trial continued. Counts 4, 5, & 8—the Court acquits defendant pursuant to Rule 29 of the F. R. Cr. P.
- 4-26-76 Trial continued and concluded. Jury verdict finds defendant Guilty on all counts 1, 2, 3, 6, 7 and 9. P.S.I. ordered. Sentence adjourned to June 7, 1976. Defendant continued on own recognizance. Brieant, J.



*Relevant Docket Entries Under Rule 30(a)*

- 4-27-76 Filed Defendants Memorandum objecting to the admission of evidence on other loan transactions.
- 4-27-76 Filed Defendant's Memorandum in support of motion to dismiss Counts 2-8.
- 4-27-76 Filed Defendant's requests to charge.
- 4-27-76 Filed Government's requests to charge.
- 4-27-76 Filed Defendant's requests to charge on the false-swearing counts.
- 6-10-76 Filed Judgment and Commitment. Defendant (attorney present). The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of two (2) YEARS on each of Counts 1, 2, 3, 6 & 7 to run concurrently with each other; ONE (1) YEAR on Count 9 to run CONSECUTIVELY to sentence imposed on Counts 1, 2, 3, 6 & 7. Defendant continued on own recognizance pending appeal . . . Briant, J.
- 6-18-76 Filed notice of appeal from Judgment entered 6-10-76.
- 76 Filed notice of certification of record to U.S. C.A. on 6-30-76.

**Indictment (75 Cr. 1246)****UNITED STATES DISTRICT COURT****SOUTHERN DISTRICT OF NEW YORK**

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**UNITED STATES OF AMERICA,****—v.—****JEROME RAPOPORT,***Defendant.*

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**COUNT ONE**

The Grand Jury charges:

On or about May 14, 1974, in the Southern District of New York, JEROME RAPOPORT, the defendant, unlawfully, wilfully and knowingly did make and cause to be made a false statement and report for the purpose of influencing the actions of Manufacturers Hanover Trust Company, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon an application for a loan in the amount of \$185,000 to Entre Nous Graphics, Inc., in that JEROME RAPOPORT, the defendant, represented and caused to be represented to said bank that no attorney, accountant, appraiser, agent or other party had been engaged by or on behalf of Entre Nous Graphics, Inc. who had received or was to receive any fee or other charge or compensation whatever for the purpose of rendering professional or other services of any nature whatever in connection with the preparation or presentation

*Indictment (75 Cr. 1246)*

of the loan application; and that the proceeds of the loan for which the loan application was prepared and presented would be used only as follows: Debt payment trade \$30,000 and Inventory and Carry A/R \$155,000, whereas, in truth and in fact, as JEROME RAPOPORT, the defendant, then and there well knew, he had been engaged to obtain the loan for a fee of ten percent of the loan proceeds, contingent upon their receipt by Entre Nous Graphics, Inc.

(Title 18 United States Code, Sections 1014 and 2.)

## COUNT TWO

The Grand Jury further charges:

On or about March 14, 1973, in the Southern District of New York, JEROME RAPOPORT, the defendant, unlawfully, wilfully and knowingly did make and cause to be made a false statement and report for the purpose of influencing the actions of First National City Bank, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon an application for a loan in the amount of \$388,000 to Electrical Precision Meter Corp., in that JEROME RAPOPORT, the defendant, represented and caused to be represented to said bank that Harold Wapnick was the only attorney, accountant, appraiser, agent or other party who had been engaged by or on behalf of Electrical Precision Meter Corp. and who had received or was to receive any fee or other charge or compensation whatever for the purpose of rendering professional or other services of any nature whatever in connection with the preparation or presentation of the loan application, whereas, in truth

*Indictment (75 Cr. 1246)*

and in fact, as JEROME RAPOPORT, the defendant, then and there well knew, he had been engaged to obtain the loan for a fee, contingent upon the receipt of the proceeds of the loan by Electrical Precision Meter Corp.

(Title 18, United States Code, Sections 1014 and 2.)

**COUNT THREE**

The Grand Jury further charges:

On or about April 3, 1973, in the Southern District of New York, JEROME RAPOPORT, the defendant, in a matter within the jurisdiction of an agency of the United States, namely, the Small Business Administration, unlawfully, wilfully and knowingly did make and use, and did aid, abet, counsel, command, induce, procure and cause to be made and used, a false writing and document, to wit, an Application for Loan (SBA Form 4) in the amount of \$388,000 to Electrical Precision Meter Corp., knowing the Application for Loan to contain false, fictitious and fraudulent statements and entries, to wit, that Harold Wapnick was the only attorney, accountant, appraiser, agent or other party who had been engaged by or on behalf of Electrical Precision Meter Corp. and who had received or was to receive any fee or other charge or compensation whatever for the purpose of rendering professional or other services of any nature whatever in connection with the preparation or presentation of the Application for Loan, whereas, in truth and in fact, as JEROME RAPOPORT, the defendant, then and there well knew, he had been engaged to obtain the loan for a fee, contingent upon the receipt of the proceeds of the loan by Electrical Precision Meter Corp.

(Title 18, United States Code, Sections 1001 and 2.)



*Indictment (75 Cr. 1246)*

## COUNT FOUR

The Grand Jury further charges:

On or about November 26, 1973, in the Southern District of New York, JEROME RAPOPORT, the defendant, unlawfully, wilfully and knowingly did make and cause to be made a false statement and report for the purpose of influencing the actions of Manufacturers Hanover Trust Company, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon an application for a loan in the amount of \$285,000 to Goggi International, Ltd., in that JEROME RAPOPORT, the defendant, represented and caused to be represented to said bank that Sheldon D. Horowitz was the only attorney, accountant, appraiser, agent or other party who had been engaged by or on behalf of Goggi International, Ltd. and who had received or was to receive any fee or other charge or compensation whatever for the purpose of rendering professional or other services of any nature whatever in connection with the preparation or presentation of said loan application, whereas, in truth and in fact, as JEROME RAPOPORT, the defendant, then and there well knew, he had been engaged to obtain the loan for a fee of \$28,500, contingent upon the receipt of the proceeds of the loan by Goggi International, Ltd.

(Title 18, United States Code, Sections 1014 and 2.)

## COUNT FIVE

The Grand Jury further charges:

On or about January 18, 1974, in the Southern District of New York, JEROME RAPOPORT, the defendant, in a matter

*Indictment (75 Cr. 1246)*

within the jurisdiction of an agency of the United States, namely, the Small Business Administration, unlawfully, wilfully and knowingly did make and use, and did aid, abet, counsel, command, induce, procure and cause to be made and used, a false writing and document, to wit, an Application for Loan (SBA Form 4) in the amount of \$285,000 to Goggi International, Ltd., knowing the Application for Loan to contain false, fictitious and fraudulent statements and entries, to wit, that Sheldon D. Horowitz was the only attorney, accountant, appraiser, agent or other party who had been engaged by or on behalf of Goggi International, Ltd. and who had received or was to receive any fee or other charge or compensation whatever for the purpose of rendering professional or other services of any nature whatever in connection with the preparation or presentation of the Application for Loan, whereas, in truth and in fact, as JEROME RAPOPORT, the defendant, then and there well knew, he had been engaged to obtain the loan for a fee of \$28,500, contingent upon the receipt of the proceeds of the loan by Goggi International, Ltd.

(Title 18, United States Code, Sections 1001 and 2.)

**COUNT SIX**

The Grand Jury further charges:

On or about March 19, 1973, in the Southern District of New York, JEROME RAPOPORT, the defendant, unlawfully, wilfully and knowingly did make and cause to be made a false statement and report for the purpose of influencing the actions of First Israel Bank and Trust Company of

*Indictment (75 Cr. 1246)*

New York, a bank the deposits of which were then insured by the Federal Deposit Insurance Corporation, upon an application for a loan in the amount of \$350,000 to Smugglers Attie, Inc., in that JEROME RAPOPORT, the defendant, represented and caused to be represented to said bank that Feinblatt, Blonder and Seymour were the only attorneys, accountants, appraisers, agents or other parties who had been engaged by or on behalf of Smugglers Attie, Inc. and who had received or were to receive any fee or other charge or compensation whatever for the purpose of rendering professional or other services of any nature whatever in connection with the preparation or presentation of the loan application, whereas, in truth and in fact, as JEROME RAPOPORT, the defendant, then and there well knew, he had been engaged to obtain the loan for a fee of ten percent of the loan proceeds, contingent upon their receipt by Smugglers Attie, Inc.

(Title 18, United States Code, Sections 1014 and 2.)

## COUNT SEVEN

The Grand Jury further charges:

On or about March 20, 1973, in the Southern District of New York, JEROME RAPOPORT, the defendant, in a matter within the jurisdiction of an agency of the United States, namely, the Small Business Administration, unlawfully, wilfully and knowingly did make and use, and did aid, abet, counsel, command, induce, procure and cause to be made and used, a false writing and document, to wit, an Application for Loan (SBA Form 4) in the amount of \$350,000 to

*Indictment (75 Cr. 1246)*

Smugglers Attie, Inc., knowing the Application for Loan to contain false, fictitious and fraudulent statements and entries, to wit, that Feinblatt, Blonder and Seymour were the only attorneys, accountants, appraisers, agents or other parties who had been engaged by or on behalf of Smugglers Attie, Inc. and who had received or were to receive any fee or other charge or compensation whatever for the purpose of rendering professional or other services of any nature whatever in connection with the preparation or presentation of the Application for Loan, whereas, in truth and in fact, as JEROME RAPOPORT, the defendant, then and there well knew, he had been engaged to obtain the loan for a fee of ten percent of the loan proceeds, contingent upon their receipt by Smugglers Attie, Inc.

(Title 18, United States Code, Sections 1001 and 2.)

## COUNT EIGHT

1. On or about October 24, 1975, in the Southern District of New York, JEROME RAPOPORT, the defendant, having duly taken an oath as a witness to testify truthfully in a proceeding, to wit, a trial, before a court of the United States, namely, the United States District Court for the Southern District of New York, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations.

2. At said time and place, said Court was conducting a trial of alleged violations of United States statutes prohibiting conspiracy to defraud the United States (Title 18, United States Code, Section 371) and false statements for



*Indictment (75 Cr. 1246)*

the purpose of influencing the actions of a bank upon an application and loan (Title 18, United States Code, Section 1014), with the purpose of determining whether JEROME RAPOPORT, the defendant, violated said statutes.

3. It was material to said trial to ascertain whether JEROME RAPOPORT, the defendant, had received cash on various occasions.

4. At said time and place, JEROME RAPOPORT, the defendant, appearing as a witness under oath did testify falsely with respect to said material matter as follows:

Q. Mr. Rapoport, you testified when I was asking you about Mr. Agovino that the only time that you had ever received any cash in an envelope or any other way, I take it, was in the Agovino case. Was that true when you said it? A. Yes.

Q. Is it true now? A. Yes.

Q. Isn't it a fact that Mr. Seymour who you say you know gave you \$30,000 in cash on the American Medical Products Company SBA loan? Think hard.  
A. No, I don't think Mr. Seymour did.

Q. He didn't? A. No, he didn't.

Q. On several occasions he gave you envelopes with cash in them on that loan? A. (Nodding negatively.)

5. Said testimony of JEROME RAPOPORT, the defendant, as he then and there well knew, was false.

(Title 18, United States Code, Section 1623.)

*Indictment (75 Cr. 1246)*

COUNT NINE

1. On or about October 24, 1975, in the Southern District of New York, JEROME RAPOPORT, the defendant, having duly taken an oath as a witness to testify truthfully in a proceeding, to wit, a trial, before a court of the United States, namely, the United States District Court for the Southern District of New York, unlawfully, wilfully and knowingly and contrary to said oath did make false material declarations.

2. At said time and place, said Court was conducting a trial of alleged violations of United States statutes prohibiting conspiracy to defraud the United States (Title 18, United States Code, Section 371) and false statements for the purpose of influencing the actions of a bank upon an application and loan (Title 18, United States Code, Section 1014), with the purpose of determining whether JEROME RAPOPORT, the defendant, violated said statutes.

3. It was material to said trial to ascertain the nature of the relationship, if any, between JEROME RAPOPORT, the defendant, and American Medical Products Corporation.

4. At said time and place, JEROME RAPOPORT, the defendant, appearing as a witness under oath did testify falsely with respect to said material matter as follows:

Q. Did you ever hear of a company called American Medical Products Corporation, Fairfield, New Jersey?  
A. Yes.

\* \* \* \* \*

*Indictment (75 Cr. 1246)*

Q. I am sorry, did you say that you had heard of this company or you had never heard of it? A. No. I didn't say I never heard of the company. I said I knew the company. I heard the company—heard of the company.

Q. Did you have a consulting agreement with them? A. Yes.

Q. With whom did you have the consulting agreement? A. The principal of the company.

Q. What was the man's name? A. He has several other companies also. Samerell [sic].

Q. You are still holding yourself out to Mr. Samerell [sic], I take it? A. Yes, sir.

5. Said testimony of JEROME RAPOPORT, the defendant, as he then and there well knew, was false.

(Title 18, United States Code, Section 1623.)

THOMAS J. CAHILL  
*United States Attorney*

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Foreman

**Judgment and Order of Commitment Appealed From**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Docket No. 75 Cr. 1246 CLB

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UNITED STATES OF AMERICA,

--v.--

JEROME RAPOPORT,

*Defendant.*

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In the presence of the attorney for the government the defendant appeared in person on this day 6/10/76.

☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL Peter Fleming.

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE, ☒ NOT GUILTY.

There being a verdict of ☒ GUILTY.

Defendant has been convicted as charged of the offense(s) of false statements on bank loan applications. (Title 18, U.S. Code, Sections 1014 and 2); false statements on Small



*Judgment and Order of Commitment Appealed From*

Business Administration applications. (Title 18, U.S. Code, Sections 1001 and 2.); false declaration before Court. (Title 18, U.S. Code, Section 1623.)

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of TWO (2) YEARS on each of counts 1, 2, 3, 6 and 7, to run concurrently with each other; ONE (1) YEAR on count 9, to run CONSECUTIVELY to sentence imposed on counts 1, 2, 3, 6 and 7.

Defendant continued on own recognizance pending appeal.

CHARLES L. BRIENT

Date 6-10-76.

(SEAL)

**Excerpts From Second Trial Transcript**

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

74 Cr. 1141

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UNITED STATES OF AMERICA,

—v.—

JEROME RAPOPORT,

*Defendant.*

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Before :

HON. CHARLES M. METZNER,  
*District Judge and a Jury.*

New York, New York  
October 20, 1975  
10:00 a.m.

(405) Mr. Fleming: May we have an offer of proof on this witness?

Mr. Kenney: Mr. Agovino paid—will testify that he paid the defendant Rapoport a 5 per cent fee of a loan and there will be no testimony that I know of about a consulting agreement or anything of that kind. The facts are in 1968—

Mr. Fleming: I just want to know what the testimony is going to be.

*Offer of Proof*

Mr. Kenney: Then I think it is important to make this record now. He will be followed by a witness who participated in that arrangement and who (406) will also testify that after 1968, from 1968 to 1971, Mr. Rapoport developed what we consider to be the sham of a consulting agreement, and it was after that that other similar acts will follow with the consulting agreement. We think that is important.

The Court: Wait a second. This witness is going to say that Rapoport represented him or helped him to get a loan from the SBA?

Mr. Kenney: Right.

The Court: For which Rapoport charged him 5 per cent?

Mr. Kenney: Right.

The Court: Did he pay it?

Mr. Kenney: Yes.

The Court: Did he indicate on the forms that were submitted the answer "None"?

Mr. Kenney: Yes.

Mr. Fleming: I don't see the consulting fee—you know our argument, your Honor.

The Court: I know your argument.

Mr. Fleming: This is pure and simple—if it is anything, it is propensity, but it is not showing Rapoport's state of mind with regard to the Pollack transaction.

(407) The Court: I am sorry. I will let it in because he is going to follow up with what I assume is the government's proof that the whole thing is a sham, it is not true. It is a sham and therefore—

*Jerome Rapoport—Defendant—Cross*

Mr. Fleming: The last part of what Mr. Kenney was talking about, he was describing what this second witness would prove, it was more along the lines of what I might consider to be similar-act evidence, but this surely has nothing to do with similar-act evidence. There is no consulting agreement, nothing else involved.

The Court: Overruled. I will let it in.

---

(598) JEROME RAPOPORT, the defendant, being first duly sworn, testified as follows:

(685) *Cross Examination by Mr. Kenney:*

\* \* \* \* \*

(794) Q. Did you ever hear of a company called American Medical Products Corporation, Fairfield, New Jersey?  
A. Yes.

Q. Did you get an SBA loan for them? A. No.

Q. Mr. Rapoport, you testified when I was asking you about Mr. Agovino that the only time that you had ever received any cash in an envelope or any other way, I take it, was in the Agovino case. Was that true when you said it? A. Yes.

Q. Is it true now? A. Yes.

Q. Isn't it a fact that Mr. Seymour who you say you know gave you \$30,000 in cash on the American Medical Products Company SBA loan? Think hard. A. No, I don't think Mr. Seymour did.

(795) Q. He didn't? A. No, he didn't.

Q. On several occasions he gave you envelopes with cash in them on that loan? A. (Nodding negatively.)



*Marshall Samarel—for Government—Direct*

Q. That was in October, 1974 that it was disbursed, wasn't it? A. I don't recall when that was disbursed.

Q. I am sorry, did you say that you had heard of this company or you had never heard of it? A. No, I didn't say I never heard of the company. I said I knew the company. I heard the company—heard of the company.

Q. Did you have a consulting agreement with them? A. Yes.

Q. With whom did you have the consulting agreement? A. The principal of the company.

Q. What was the man's name? A. He has several other companies also. Samerell.

Q. You are still holding yourself out to Mr. Samerell, I take it? A. Yes, sir. Unless I give you a better spelling later.

\* \* \* \* \*

(879) MARSHALL SAMAREL, called as a witness by the Government being first duly sworn, testified as follows:

*Direct Examination by Mr. Kenney:*

Q. Mr. Samarel, what is your occupation? A. I am treasurer of American Metal Products Corporation.

\* \* \* \* \*

Q. When did you first meet Mr. Rapoport? (880) A. I first met Mr. Rapoport in the spring of 1974.

Q. Where was that meeting, if you recall? A. In New York City.

Q. Do you remember where? A. At a restaurant, Le Champs.

*Marshall Samarel—for Government—Direct*

Q. Do you remember where that restaurant is located?

A. Mid-Manhattan, around 40th Street and Madison Avenue.

Q. Who else was at that meeting? A. There were six gentlemen altogether.

Q. Would you tell us who they were? A. Myself, Mr. Rapoport, Mr. Raymond, Mr. Seymour, Mr. Schwartz and I believe Mr. Jenkins.

Q. Was there a conversation at that meeting, if you recall?

Mr. Fleming: For the record, your Honor, we have the same objection.

The Court: Same objection, same ruling.

Q. Would you tell us, if you can recall, what was said and who said it at that meeting? A. Basically it was a meeting set up on behalf of our company to talk to Manufacturers Hanover Trust with regard to obtaining some loans for the company.

Q. Can you remember anything else about the (881) conversation? A. Basically we just—we told the other people at the meeting, mainly the banker, Mr. Jenkins, a little bit about our company, where we have been, what we do, what we manufacture, who our market is, what we expect to do, and what we needed the money for.

Q. I would like, if you could, to exhaust your memory as to whatever was said at that conversation and who said it. Was there anything else that you recall? A. Again, it was quite some time ago. I sit in on these meetings quite regularly, and basically we just, once again, discussed the ramifications of our corporation and of our products.

I really do not recall any of the other specifics.

*Marshall Samarel—for Government—Direct*

Q. Did you ever see Mr. Rapoport again after that meeting? A. No, I did not.

Q. Did you enter into a consulting agreement with Mr. Rapoport at that meeting? A. I myself or—

Q. Yes, you yourself or the company. A. No.

The Court: I think it would be worthwhile if he identified the people in addition to himself and the (882) defendant who were present. Who is Mr. Raymond?

The Witness: He is chairman of the board of American Metal Products Corporation.

The Court: And Mr. Seymour?

The Witness: He is our accountant.

The Court: And Mr. Schwartz?

~~The Witness:~~ President of American Metal Products Corporation

Q. Who is Mr. Jenkins? A. Jenkins, he is a banker and I believed he worked in the SBA department at Manufacturers Hanover.

Q. Would you describe Mr. Schwartz' position in the company? What does he do as president? A. As president his main objective is—he is really the chief marketeer of the company, and he lines up doctors and hospitals for possible sales or leasing of our machines and equipment into the hospitals.

Q. He is your top salesman, is that fair to say? A. Yes, he is.

Q. Did you ever enter into a consulting agreement with Mr. Rapoport? A. No, we did not.

*Colloquy*

Mr. Kenney: I have no further questions of this witness.

(883) Mr. Fleming: I don't have any questions.

The Court: May I see counsel?

(At the side bar.)

The Court: What is the purpose of this testimony?

Mr. Kenney: We asked Mr. Rapoport when he was on the stand about American Metal Products, and he said that he had a consulting agreement with the company which he entered into with Mr. Samarel. This is Mr. Samarel. He said he met with him once and he never entered into any kind of a consulting agreement.

The Court: I have the testimony. Was there a loan obtained here?

Mr. Kenney: Yes, an SBA loan. We have one other witness, a fellow named Raymond, the other man—

The Court: You are not finished with American Metal?

Mr. Kenney: No.

(In open court.)

The Court: You may step down.

(Witness excused.)

Mr. Kenney: Our next witness is Mr. Raymond.



*Joseph J. Raymond—for Government—Direct*

JOSEPH J. RAYMOND, called as a witness by the Government, being first duly sworn testified as follows:

(884) *Direct Examination by Mr. Kenney:*

Q. Mr. Raymond, what is your occupation? A. Chairman of the board of American Metal Products.

Q. Do you know the defendant Jerome Rapoport? A. Yes, I do.

Q. Would you identify him for us, please? A. Sitting right there.

Mr. Kenney: Could we have a concession of identification, Mr. Fleming?

The Court: Yes.

Q. When did you first meet Mr. Rapoport? A. Early spring or late spring, it was, at a luncheon.

The Court: Of what year?

The Witness: 1974.

Q. Who arranged that meeting? A. It was arranged by Haskell Seymour.

Q. Who is Haskell Seymour? A. He is our accountant.

Q. Could you tell us what the name of his firm is? A. Seymour—Blonder, Seymour & Schapps.

Q. Who else was present at that meeting? A. Ray Jenkins from the bank—

The Court: What bank?

(885) The Witness: Manufacturers Hanover Trust.

*Joseph J. Raymond—for Government—Direct*

A. (Continuing) Bob Schwartz, president of American Metal Products, Marshall Samarel, treasurer, Haskell Seymour and Mr. Rapoport.

Q. What was said at that meeting and who said it, the best you can recall? A. The meeting lasted, I guess, about an hour and a half to two hours, and during that meeting we were trying to impress upon the bank the validity of our company and trying to show them that we can indeed be a valid candidate for an SBA loan. This is what it generally took. This is the context of the meeting, to try to obtain an SBA loan.

(Government's Exhibit 31 marked for identification.)

Q. I show you what has been marked Government's Exhibit 31 and ask you if you can identify that? Tell us what it is. A. Yes, it is the application for an SBA loan by American Metal Products.

Q. How much was the loan which you applied for? A. \$385,000.

Q. What bank is the application made to? A. Manufacturers Hanover Trust.

(886) Q. Was that application filed after the meeting you just described? A. Yes.

Q. Would you tell us what the date on the application is? A. July 26, 1974.

Q. What is the date by the signatures? A. I'm sorry, May 23, 1974.

Q. After the application was filed, did your accountant Mr. Haskell Seymour, have contacts with the defendant Jerome Rapoport, if you know? A. I assume that—

*Joseph J. Raymond—for Government—Direct*

Mr. Fleming: I move to strike. He said, "I assume."

The Court: The question or the testimony he gave before?

Mr. Fleming: I am confused, your Honor.

The Court: I can't hear you. Raise your voice.

Mr. Fleming: I objected to the question and then the answer was, "I assume," so I further object to the question and I asked to strike the assumption.

The Court: I will strike the answer. I will not strike the question because he has asked if he knows.

Mr. Fleming: Could we define knowledge, then, (887) your Honor, so the witness knows we are talking about personal knowledge.

The Court: Do you have personal knowledge that they met?

The Witness: Mr. Seymour had told me that he did. That is about it—that he had met with Mr. Rapoport.

Mr. Fleming: I move to strike it and move for a mistrial.

The Court: Overruled.

Mr. Fleming: As to striking?

The Court: No, granted as to striking, overruled as to a mistrial.

Q. Mr. Raymond, did you subsequently meet with Mr. Rapoport? A. Yes, I did.

Q. When was the next time you met with him? A. After the loan was approved, probably about a week or so.

Q. Where did that meeting take place? A. At Mr. Seymour's office.

*Joseph J. Raymond—for Government—Direct*

Q. Would you tell us what you did and what you said and what Mr. Rapoport said? A. Well, it was a by chance meeting. I was up there delivering \$4,000 to Mr. Seymour for payment on this (888) loan, and I by chance met Mr. Rapoport who had at that time asked me for some more money—

The Court: Wait, wait. You said you were delivering \$4,000 to Seymour as payment on the loan?

The Witness: Yes.

The Court: What were you giving him \$4,000 as payment on the loan for?

The Witness: To Mr. Seymour?

The Court: Yes.

The Witness: I assumed it was being delivered to Mr.—

The Court: I don't care what you assumed. What were you giving Mr. Seymour \$4,000 for? This is cash, I gather?

The Witness: Yes, it was.

The Court: What were you giving Seymour \$4,000 for? You said this was a fee for him?

The Witness: No, it was a fee for Mr. Rapoport.

The Court: Did you give the money to Mr. Rapoport?

The Witness: No, I didn't.

The Court: Was Mr. Rapoport in the room when you gave it to Mr. Seymour?

The Witness: No, he wasn't.

The Court: Did you have a conversation with Mr. (889) Rapoport while you were there?

The Witness: Yes, I did.



*Joseph J. Raymond—for Government—Direct*

The Court: What was that conversation?

The Witness: The conversation was that Mr. Rapoport felt that he wanted some more money based upon our not giving him an equity position in American Metal Products.

The Court: What did he say? I want to know what he said, what he said to you and what you said to him.

The Witness: He felt that—

The Court: Not he felt. What did he say to you?

The Witness: I am saying what he said. He said, "I felt I have done a very good job for you in obtaining the SBA loan, and I thought that I gave a lot away by not taking a total equity position and that I feel that I should have some more money."

I sort of objected to it and told him that I didn't feel he should have any more money than was given.

The Court: All right.

*By Mr. Kenney:*

Q. After that meeting did you see Mr. Rapoport again?

A. Yes, I did.

Q. When was the next time you saw him? A. It was at the Metropolis Country Club in White (890) Plains, probably about another three weeks after that.

Q. Was there anyone else present when you met with Mr. Rapoport on that occasion? A. Yes, Mr. Seymour.

Q. Would you tell us what you did and what you and Mr. Rapoport said on that occasion? A. Well, I delivered \$11,000 in cash to Mr. Rapoport at that time and I gave it to him, and at that particular time the conversation was

*Joseph J. Raymond—for Government—Direct*

based on additional finances and if we needed some additional finances he would be glad to work with us as to trying to help us obtain some more money, if needed.

Q. What did you say to Mr. Rapoport? A. I told him that I would contact him if needed, and that it sounded like a good idea.

Q. Subsequent to that did you meet with Mr. Rapoport again? A. No.

Q. Did you give any money to Mr. Seymour? A. No. No more than what I have said.

Q. Did anyone else in your company give any money to Mr. Seymour? A. Yes.

Q. How much money was given Mr. Seymour? (891)  
A. A total of—between Mr. Rapoport and Mr. Seymour, a total of \$31,600, I think, was given, and this was the number we filed on our 1099 form.

Q. Where did that money come from? A. The money came from American Metal Products.

Q. Any particular income to American Metal Products?  
A. We had—we didn't have enough income for it all to come from there. It had to come from the SBA loan.

Q. Would you look at Government's Exhibit 31, please.

Does Mr. Rapoport's name appear any place there? A. No, sir.

Q. What is the status of the SBA loan at this time? A. Current.

Q. Have you been told by the Government that you would not be prosecuted for making a false statement to the Government or to the SBA or to the bank? A. I don't understand your question.

Q. Do you expect to be prosecuted for filing a false statement? A. No.

Mr. Kenney: I have no further questions.

*Government's Opening Statement*

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

75 Cr. 1246

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UNITED STATES OF AMERICA,

*Plaintiff,*

—v.—

JEROME RAPOPORT,

*Defendant.*

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Before:

HON. CHARLES L. BRIEANT, *D.J.*,  
and a Jury.

New York, April 12, 1976;  
Room 619 10:00 A.M.

(2) GOVERNMENT'S OPENING STATEMENT:

(2) The Court: Mr. Cutner, you may make an opening statement on behalf of the government.

Mr. Cutner: Thank you, your Honor.

May it please the Court, Mr. Fleming, Mr. Lauer, Mr. Foreman, Members of the Jury: You are about to learn how Jerome Rapoport, the defendant on trial, this man right here, made more than \$120,000 by advising people to tell lies. This man is a lawyer. He is supposed to uphold

*John Gaeta—for Government—Cross*

the law, but he did not. He did not want his clients to tell the truth. He did not want that because to have them tell the truth would have cost him more than \$120,000—\$120,000.

Now, some people are willing to do or say almost anything for that kind of money. In his case one lie led to another until he found himself before a group of jurors just like yourselves, charged with counselling his clients to make false statements, to tell lies.

In defending himself, this man again did not respect the law. He did not tell the truth. Instead, before a group of jurors, just like yourselves, he made more untruths, more false statements, this time under oath, on his oath, this man, a lawyer, gave perjury.

False statements, \$120,000 perjury. That's the (3) essence of what the government expects to prove in this case.

\* \* \* \* \*

(46) JOHN GAETA, called as a witness by the government, being first duly sworn, testified as follows:

\* \* \* \* \*

(48) *Cross Examination by Mr. Fleming:*

\* \* \* \* \*

(55) Q. By the way, am I correct that you were the sign-off for final approval or partial approval on the loan which is Exhibit 1, the Entre Nous loan?

The Court: Ask what he did. There are too many things in that one question.

Did you approve No. 1, Entre Nous? A. I believe I did. I just want to check. Yes, sir.



*Harold Rosenbaum—for Government—Direct*

Q. So in your judgment it was a loan which was worth guaranteeing? A. Yes, sir.

Q. Do you know Jerry Rapoport? A. Yes, sir.

Q. Am I correct that he worked with the Small Business Administration while you worked there? A. Yes, sir.

Q. He was there about two years? (56) A. That's correct.

Q. Did you know him at that time? A. Yes, sir.

Q. In connection with the Entre Nous application, did Jerry Rapoport ever speak to you about that application? A. No, sir.

. . . . .

Q. With all respect, did he ever pay you any money to get you to sign off on those loans? A. No, sir.

. . . . .

(86) HAROLD ROSENBAUM, called as a witness by the government, being first duly sworn, testified as follows:

*Direct Examination by Mr. Cutner:*

. . . . .

A. I was the vice president and secretary of Smugglers Attic, Inc.

Q. What was Smugglers Attic? A. Smugglers Attic was a chain of retail specialty stores and at that time we also manufactured (87) a line of cosmetics too.

. . . . .

Q. Now, what period of time were you with Smugglers Attic? A. From August, 1970 through the termination.

Q. Mr. Rosenbaum, let me direct your attention to early 1973, and I ask you to describe to the jury the financial con-

*Harold Rosenbaum—for Government—Direct*

dition of the company at that time. A. The financial condition of Smugglers Attic at that time was very poor. We had been banking at that time with the Bankers Trust Company and they were somewhat unsure of us, and they had called in our loans, and we were looking for additional financing.

Q. Were you able to obtain additional financing? A. We obtained a small amount of interim (88) financing from the First Israel Bank & Trust Company and through other private sources we were totally unsuccessful.

. . . . .

(89) Q. The interim financing? A. Yes, sir.

Q. Do you recall how much that was? A. It was originally \$40,000 and then it was extended to \$70,000.

Q. Did there come a time when you met a man named Jerome Rapoport? A. Yes.

. . . . .

Q. Where did you meet Mr. Rapoport? A. I met him at our accountant's office, Joseph Blonder, B-l-o-n-d-e-r. The firm is Blonder, Seymour & Shapss.

(90) Q. Is that in New York City? A. Yes, in New York City.

Q. When was the introduction or the meeting at Mr. Blonder's office? A. Early part of '73, January or so.

Q. Who was present at the discussion? A. Myself, my partner, Sol Inspector, Joseph Blonder and Jerome Rapoport.

Q. Now, Mr. Rosenbaum, as best as you can recall, in words or in substance, who said what at the meeting at Mr. Blonder's office?

. . . . .

*Harold Rosenbaum—for Government—Direct*

(92) The Court: Tell us the substance of the conversation, please.

Q. If you can't remember the exact words, Mr. Rosenbaum, just tell us the substance of what happened, what was the meeting about, what was said. A. Yes, sir. The meeting was about obtaining a loan through the SBA and working through the First Israel Bank & Trust Company. As I said, they had given us the original interim financing and the purpose of the meeting was to discuss what arrangements was necessary in order to secure a loan guaranteed by the SBA.

Q. Did you discuss at the meeting what had to be done?

A. Yes, we did.

Q. Can you tell us what was said about what had to be done? A. The discussion involved the proper forms and paper work that had to be submitted.

Q. Who told you about the forms and the paper work?

A. Jerome Rapoport.

Q. Go ahead. (93) A. The timetable or approximate timetable it would take in order to secure the loan. We discussed also at that time the fee arrangement that was to be given to Mr. Rapoport.

Q. When you say you discussed the timetable, who brought that subject up? A. I'm sure I did.

Q. What did you want to do? A. How long it would take to secure a loan. As I said, we were heavily strapped—

Mr. Fleming: May we please, your Honor, have conversation.

The Court: I don't know why we can't have conversations. Did you tell Mr. Rapoport and Mr.

*Harold Rosenbaum—for Government—Direct*

Blonder that you had a problem about the timing of the loan? A. No, it was just a matter of—

The Court: What did you say? Here you are in this meeting. Just tell us what you said and what they said, each of them.

The Witness: Let me put myself in the meeting and I would have said—I don't know verbatim—

The Court: We are not asking for verbatim. Just give us the substance of your (94) conversation.

The Witness: Okay. So I would have said "How long will it take us to get the money?" In other words, after the papers are filed, how long can we expect to get an answer and approval or a denial from the SBA, and then from that point on, how long would it take to transfer the money, and these are the general questions that were brought up.

Q. Did anyone answer those questions that you asked?  
A. Yes, Jerome Rapoport did.

Q. What was the answer? A. The answer to the questions? That it would take a couple of weeks after the papers were submitted and within a week or two after that the moneys could be transferred over.

Q. And you mentioned a fee. Is that something you asked about? A. Yes.

Q. Was there an answer to your question? A. Yes, the fee was to represent 10 per cent of the loan.

Q. Who told you that, Mr. Rosenbaum? A. Jerome Rapoport.



*Harold Rosenbaum—for Government—Cross*

(95) Q. Was there further discussion about the fee? A. No, there was no further discussion?

Q. Did you discuss what would happen if you did not get the loan? A. If there was no loan, we didn't pay the fee.

Q. Was there any discussion about consulting services to be rendered apart from the loan? A. No.

Q. Did you discuss the amount of the loan? A. Yes, the amount was to be \$350,000.

Q. Did you object in any way to Mr. Rapoport's fee? A. No.

\* \* \* \* \*

(105) *Cross Examination by Mr. Fleming:*

\* \* \* \* \*

(106) Q. The loan which was the subject of the SBA guarantee was made by Bank Leumi, is that right? A. That's correct.

Q. Now, before you had ever met Jerry Rapoport, you had borrowed \$70,000 from Bank Leumi, is that correct? A. That is correct.

Q. So that Jerry Rapoport did not find the Bank Leumi for you, did he? A. Absolutely not.

Q. You found it yourself. A. That's correct.

Q. Okay. Did Jerry Rapoport ever walk you down to the Bank Leumi and go to the loan officer and in your presence say to the loan officer, "Give this guy a loan"? A. No, he did not.

\* \* \* \* \*

(116) Q. I want to show you Exhibit 4. Is that the loan application you filed with the SBA? A. Yes, it is.

*Harold Rosenbaum—for Government—Cross*

The Court: Is that your signature on the bottom of the page there?

The Witness: It is, yes.

Mr. Fleming: That's what I was trying to find out.

Q. There are two signatures. Can you identify them?

A. Mine is on the left, signed as Secretary, and Solomon Inspector is President.

Q. Now, Feinblatt, Blonder & Seymour are specified in Paragraph 10 as having prepared the application, is that correct? (117) A. That's correct.

Q. And the total compensation is "None." Then, "Compensation: Annual Retainer," is that right? A. That's correct.

Q. And so far as you know, is it correct that Feinblatt, Blonder & Seymour did in fact prepare the application? A. They did, yes, sir.

Q. Do you have any personal knowledge of a single thing that Mr. Rapoport did to prepare that application? A. Personal knowledge?

Q. Yes. A. No, I have no personal knowledge of that.

Q. And did you sign as Secretary a certification which says that essentially no fee has been paid for obtaining the loan? A. Yes, I signed that. That is my signature there.

\* \* \* \* \*

(119) Q. Did Mr. Rapoport ever tell you to lie on that form? A. I don't remember anything like that.

\* \* \* \* \*

*Sol Inspector—for Government—Direct*

(122) A. Jerome Rapoport was not hired as our financial consultant. He was hired to get us a loan from the SBA.

Q. He was hired to get you a loan, to obtain a loan for you. A. That's correct.

Q. Is that right? You tell me, Mr. Rosenbaum, of your knowledge, one single thing that Jerome Rapoport did to get you the loan. A. Very honestly, I can't tell you anything.

Q. It was your bank. A. My bank.

Q. You had already borrowed \$70,000 from them. A. That's correct.

(123) Q. Blonder, your accountant, prepared the application. A. That's correct.

Q. You signed it. A. That's correct.

Q. It does not show "Rapoport." A. It does not.

Q. It certifies you paid no one to obtain the loan for you, is that right? A. It certifies that I paid no one to obtain the loan for me, that's correct.

Q. And you told the FBI that you didn't have any problem signing it. A. I told him I signed it. There were a number of documents presented: "Sign it and you'll get the money." We signed it.

\* \* \* \* \*

(132) SOL INSPECTOR, called as a witness by the government, being first duly sworn, testified as follows:

\* \* \* \* \*

*Direct Examination by Mr. Cutner:*

\* \* \* \* \*

Q. And what were you doing prior to April of '75? A. I was president of Smugglers Attie, Inc.

\* \* \* \* \*

*Sol Inspector—for Government—Direct*

(134) Q. Mr. Inspector, when was the meeting that you had with Mr. Rapoport? A. Must have been some time in February, I think, '73, or March.

Q. This was in Mr. Blonder's office? A. That is correct.

Q. Who was present at the meeting? A. Mr. Blonder, Mr. Rapoport, Mr. Rosenbaum and myself.

Q. Tell us, if you would, who said what at the meeting? What was discussed? A. The discussion was a SBA loan. The question was the magnitude of the loan and some fees to be paid for obtaining the loan.

Q. Tell us, if you can, who asked about the size of the loan? A. I think we all discussed it. I don't remember.

Q. You and your partner, Mr. Rosenbaum, were the ones who were looking for a loan, right? A. That's correct.

Q. What did you want to know from Mr. Rapoport?

Mr. Fleming: I object.

(125) The Court: Sustained.

Q. What did you ask at the meeting? A. I asked how long it would take and how much paper work would be involved, who would prepare it and how much would it cost me.

Q. And what was the answer and who provided the answer, if you recall? A. I know the answer. Who provided, you are asking me. First of all the answer, we were looking for a loan—

Mr. Fleming: I object.

I withdraw it.



*Sol Inspector—for Government—Direct*

Q. First let's take the amount of the loan. Did you ask about the amount of the loan? A. The amount was for \$350,000.

Q. Who told you that? A. At that time?

Q. Yes. A. We asked for it. I mean, we asked what is the maximum, I remember, and I think Mr. Rapoport said 350, and we said that we would appreciate it if we could get that much.

Q. What else did you ask? A. We asked how long it would take, and the question came up, and I think at that time Mr. Rapoport said that it (136) would take something in the order of two to three weeks or maybe even less.

Q. Two to three weeks to do what? A. To arrange the loan.

Q. Did you, by the way, get the loan? A. Yes.

Q. How long did it take? A. I think the approval of the loan came within about two weeks. The actual money maybe three to four weeks.

Q. What else did you ask at the meeting? A. There was a question of some fees to be paid for the various services.

Q. A question of whose fees for what services? A. There were some books to be brought up to date by our accountant, Mr. Blonder, and there was money to be paid to Mr. Rapoport.

Q. What was said on the question of Mr. Blonder's fees? A. Well, I think that Mr. Blonder received—he was—

The Court: What did he say? He is trying to get from you the substance of the conversation. You don't have to give the exact words, but the substance of the (137) discussion.

*Sol Inspector—for Government—Direct*

Who said what to whom?

The Witness: The substance of the conversation, as I remember, was that Mr. Blonder was going to prepare the documents, all the financial reporting and so on, and we owed him money for the prior year and that we would pay him for the prior year money that will encompass all the work up to that point, and Mr. Rapoport was supposed to have gotten 10 per cent of the loan.

Q. Who said that? A. I don't remember. I—I don't remember. The only one who could have said it was either Mr. Rapoport or—

Mr. Fleming: No. I object to that, your Honor.

The Court: Well, I will strike that out. He may be asked whether he said it.

Mr. Fleming: Yes. No objection to that.

The Court: Whether he said it. He can say whether he said it.

Mr. Fleming: I said I have no objection, your Honor.

Q. This was the first time you met Mr. Rapoport? A. That's correct.

Q. Did you tell him how much his fee was? A. I argued over the fee.

(138) Q. Did you tell him how much his fee was? A. No, I did not.

Q. Did Mr. Rosenbaum tell him how much his fee was? A. He did not.

*Sol Inspector—for Government—Direct*

Q. Now, what did you say to Mr. Rapoport about the fee and what did he reply to you, if anything? A. I was concerned how the fee would be paid, when and what would happen if we did not obtain the loan.

Q. Is that what you said to Mr. Rapoport at the meeting? A. I also thought it was quite a bit of money.

Q. You said all of those things at the meeting? A. Yes, I did.

Q. What was Mr. Rapoport's response, if any? A. Again, the essence of the conversation that I remember was that no money would be paid if the loan did not come through and that the money would come at the end of the proceedings and with respect to the amount, he says this was a normal amount of money to be paid for such a thing.

Q. Was anything else said in response to your objection that the price was high? A. I don't remember.

(139) The Court: Who said it was a normal amount to be paid?

The Witness: Mr. Rapoport did.

Q. What services was Mr. Rapoport to render for the 10 per cent fee that he was to receive? A. As I understand it?

Q. No. What was said on that subject? A. What was said? The fee was to be paid with the idea of obtaining the loan.

Q. Of what? A. It was a contingency fee, in a sense; if the loan would have gone through, then the fee would be paid.

*Sol Inspector—for Government—Direct*

Q. What were the services that Mr. Rapoport was to render in exchange for the fee? A. I really don't know except the fact that he said he would be able to put it all together and to give me the loan for the prescribed time that I mentioned, in two to three weeks.

Q. Did he say he was going to package the loan or present the loan? A. In those words? No.

Q. In substance? A. In substance, maybe.

Mr. Fleming: In substance, maybe?

(140) A. In substance, yes.

Q. Was there any discussion at that meeting about Mr. Rapoport rendering legal fees—excuse me—legal services to your company? A. No, not at that meeting.

Q. Did you have lawyers, by the way? A. Yes, I did.

Q. Who were your lawyers? A. We had a firm in New York. I think it was Finley, Kumble, Underberg, Kresky & Roth.

Q. Mr. Rapoport was not your lawyer? A. No, he was not.

Q. Did he ever perform any legal services for you? A. Outside the loan?

Q. Inside the loan. A. No, he did not.

Q. Now, again, at the meeting at Mr. Blonder's office, was there any discussion concerning Mr. Rapoport rendering consulting services to your company, Smugglers Attic? A. No. At that time I don't think that that was brought up. I don't remember.

. . . . .



*Sol Inspector—for Government—Cross*

(150) *Cross Examination by Mr. Fleming:*

\* \* \* \* \*

Q. Did Mr. Rapoport find the Bank Leumi for your company, did he bring you, the company— A. No, he did not.

Q. —to the bank? Had you been there before? A. I was.

Q. You borrowed \$75,000 from them? A. I did.

Q. As a matter of fact, was Gazziano, the bank officer at Bank Leumi, the one who suggested to you fellows that you might try to seek SBA guaranteed financing? A. That is correct.

Q. That was a suggestion from the loan officer? A. Yes.

Q. From whom you already borrowed \$70,000 through the bank? A. Yes.

Q. Did Mr. Rapoport ever walk with you down to the (151) Bank Leumi and tell Mr. Gazziano that "You ought to give these fellows a loan"? A. No, he did not.

Q. Did he ever walk you over to the SBA and say anything to the SBA, "You ought to give these fellows a guarantee"? A. No, he did not.

Q. Was he at the closing? A. Yes, he was.

Q. Mr. Gazziano was at the closing? A. Yes.

Q. He was the loan officer? A. That is correct.

Q. So Mr. Gazziano knew that at least at that time, at that moment, to your knowledge, that Mr. Rapoport was sitting in the room with you at the closing of the loan? A. That is correct.

Q. He saw you sign, Mr. Gazziano saw you sign Government's Exhibit 4? A. Yes.

Q. Did Mr. Rapoport tell you to tell any lies in connection with this exhibit? A. No.

\* \* \* \* \*

*Joseph Blonder—for Government—Direct*

(170) JOSEPH BLONDER, called as a witness by the government, being first duly sworn, testified as follows:

. . . . .

*Direct Examination by Mr. Cutner:*

Q. Mr. Blonder, would you tell us your business or occupation? A. I am a CPA.

Q. How long have you been a CPA? A. Approximately 16 years.

Q. Are you with a firm, sir? A. Yes.

Q. What is the name of your firm? A. My firm name is Blonder, Seymour & Shapss, S-h-a-p-s-s.

Q. Was that firm formerly known by another name? A. Yes.

Q. What was that name? A. Feinblatt, Blonder & Seymour.

Q. And when was the name changed? A. September, '73.

(171) Q. Now, referring to the years 1972 and 1973, did your firm represent a company called Smugglers Attie? A. Yes.

. . . . .

(173) Q. Did there come a time when you met a man named Jerome Rapoport? A. Yes, I did.

Q. When was that? A. It was in the early part of 1973.

Q. How did you come to meet Mr. Rapoport? A. At the time when I spoke to the bank officer, Frank Gaziano [sic], and he said that they could not go further, he suggested that perhaps the company could come down with an SBA—that they could file for an SBA loan.

Q. Did Mr. Gazziano introduce you to Mr. Rapoport? A. Yes, he did.

*Joseph Blonder—for Government—Direct*

Q. Where was this introduction made? A. We set up a meeting and the first time I met him was in a cafeteria which is half-way down the block from where the bank is located.

. . . . .

(174) Q. Would you tell us as best as you can recall what was said at the cafeteria and by whom? (175) A. Yes. I had some of the financials of the company with me and we went through the financials and I asked Mr. Rapoport whether there was a viable way that we could—that we can secure the necessary—

Q. SBA loan? A. SBA loan, that's correct.

The Court: You had never met Mr. Rapoport before that day?

The Witness: No.

(176) Q. Did Mr. Rapoport look at the financials that you had with you? A. Yes, he did.

Q. And did he answer your question? A. Yes, he did.

Q. What was the answer that Mr. Rapoport gave you? A. He said he believed we could come up with SBA financing.

. . . . .

(187) Q. I am showing you Government's Exhibit 4 for (188) identification, an SBA application for loan on behalf of Smugglers Attie.

Did Mr. Rapoport give you that form? A. Yes, he did.

Q. Did you prepare a pencil draft of the form? A. Yes, I did.

*Joseph Blonder—for Government—Direct*

Q. Of that particular form? A. Yes, I did.

Q. When was that that you prepared the pencil draft?

A. It had to be the early part of March 1973.

Q. Did you prepare the pencil draft right on the spot in Mr. Rapoport's apartment? A. No. I did it in my office.

Q. What did you do with the pencil draft after you prepared it? A. I brought it back to his apartment and we went over the form.

Q. How soon after you received the form from Mr. Rapoport did you bring it back to him? A. It had to be within the week or thereabouts.

Q. When you returned the form to Mr. Rapoport at his apartment, did you have any discussion with him? A. I don't understand the question, sir.

Q. Did you have a discussion with Mr. Rapoport about (189) the form when you took it back to him? A. Yes. We went over the forms. We went over these forms and went over the open items and went over the items which I didn't have the answers to.

Q. Mr. Blonder, I am referring your attention to item No. 10 of the form, entitled "Names of attorneys, accountants and other parties," and there is a blank space for name and address, description of services rendered and to be rendered, total compensation agreed to be paid and compensation already paid.

Did you discuss that part of the form with Mr. Rapoport? A. Yes.

Q. Tell us, if you would, what you said to Mr. Rapoport and what he said to you concerning item 10 on the form.

A. I said "I am putting my firm's name on the application. What about your name?"



*Joseph Blonder—for Government—Direct*

He said it was neither needed nor required.

Q. Did you question him about that, Mr. Blonder? A. At that time I really did not. My whole—as far as the loan, I wanted to get it done as speedily as I could.

Mr. Fleming: No, your Honor. Could we have an (190) answer?

The Court: Yes. I'll strike out all of the answer except "No, I did not."

Q. Who prepared this form, Government's Exhibit 4, in the final version as it was submitted? A. I did.

Q. Did you know that you were making a false statement here in item No. 10? A. Yes, I did.

Q. Why was that a false statement, Mr. Blonder?

\* \* \* \* \*

A. Because I knew that his name should appear there also.

Q. And what did you do with Government's Exhibit 4 after it was prepared in the final typed version? A. I'm slightly vague about that point. Either I had my girl deliver it to Mr. Rapoport's apartment or else (191) my girl delivered it directly to the bank.

\* \* \* \* \*

(196) Q. What happened to the money from those checks? A. Excuse me?

Q. What happened to the money from those checks?

A. Are you asking about the amount for the five or are you asking about the other amount?

Q. Let's take them one at a time.

What happened to the money from the \$5000 check? A. The \$5000 check was deposited in one of our accounts.

*Joseph Blonder—for Government—Direct*

Q. You kept that money? A. That is correct.

Q. What about the \$3500 check? A. There is a check here for \$3500 which was cashed.

Q. What did you do with that money? A. A substantial sum of that money eventually went to Frank Gazziano.

Q. Eventually to Frank Gazziano? (197) A. That is correct.

Q. When did you give that to Mr. Gazziano? A. I'd say it had to be within four to six weeks after that period of time.

Q. Four to six weeks after the loan closed? A. That's correct.

Q. Did you have some agreement to give that money to Mr. Gazziano? A. No, I did not.

Q. Did you have any discussion about the fact that you might give him some money? A. As far as my relations with Mr. Gazziano, I ran one SBA loan with Mr. Gazziano's bank.

Mr. Fleming: That is not the question.

The Court: Yes. That is not the question.

Reframe the question.

The Witness: I'm sorry.

Q. Mr. Blonder, prior to the closing on the Smugglers Attic loan, did you indicate to Mr. Gazziano that you were going to give him some money? A. There was no agreement made as far as an SBA closing. I did not promise Mr. Gazziano money if this loan were closed.

Q. Are you saying that this is a gift you gave him (198) afterwards? A. This is a gift, and I made several other gifts to the man during the year.

*Joseph Blonder—for Government—Cross*

Q. You made a number of gifts to Mr. Gazziano? A. That's correct.

Q. Did you have any agreement to make gifts to him or give him money? A. There were no agreements made. But at that time I felt that my relationship with the bank was very imperative that I get business from the bank. I thought it would be helpful to him and helpful to my firm.

Q. You did this afterwards to encourage business from the bank? A. That is correct.

\* \* \* \* \*

(203) *Cross Examination by Mr. Fleming:*

\* \* \* \* \*

(208) Q. Did Mr. Rapoport tell you to make the payments to Mr. Gazziano? A. No.

\* \* \* \* \*

(210) The Court: When did you tell Mr. Wilson that you had paid money to Mr. Gazziano?

The Witness: The first time I saw Mr. Wilson, I told Mr. Wilson that I had given moneys to Mr. Gazziano on several occasions.

The Court: And when did you obtain immunity from Mr. Wilson?

The Witness: After I spoke with him, after I spoke with him and after—

The Court: The first time?

The Witness: I believe I only spoke with Mr. Wilson once, if I recall. I'm not certain, but I think I only spoke to him once.

*Joseph Blonder—for Government—Cross*

The Court: Did he give you the immunity before you told him about Gazziano or after?

The Witness: I believe the relationship was that my attorney called me and told me to go down and see Mr. Wilson and that I have immunity.

The Court: So that you had immunity before you saw Mr. Wilson.

The Witness: I believe I did, your Honor. I believe I did.

*By Mr. Fleming:*

Q. And that immunity has never been taken back by (211) anyone?

The Court: Well, they can't do that.

Mr. Cutner: I object, your Honor.

Mr. Fleming: Actually, they can, your Honor.

Mr. Cutner: I object to that, your Honor.

The Court: I will sustain the objection.

Q. Now directing your attention to the Smugglers Attic loan, Mr. Blonder, the loan was from the Bank Leumi? A. Sorry. I didn't hear you.

The Court: Start again, please.

Q. Directing your attention to the Smugglers Attic loan, the loan was disbursed from Bank Leumi? A. That's correct.



*Joseph Blonder—for Government—Cross*

Q. And guaranteed by the SBA. A. That's correct.

Q. The Bank Leumi was the banker for Smuggler's Attie before you ever met Jerry Rapoport? A. That's correct.

(212) Q. And before you ever met Jerry Rapoport the Bank Leumi had loaned Smugglers Attie \$75,000? A. I would say yes.

Q. So is it fair to say that Jerry Rapoport did not find the Bank Leumi for Smugglers Attie? A. That's correct.

. . . . .

(215) Q. You also prepared the financials for the SBA—  
A. That's correct.

Q. —loan application, is that correct? A. Yes.

Q. Jerry Rapoport didn't prepare the financials, did he? A. They were prepared by me.

Q. Sure. And were they accurate? A. Yes, they were.

Q. Did you answer questions from the bank or from the SBA about the financial condition of Smugglers Attie?

A. Whatever information that was required to be filed with the loan were answered by me.

Q. By you? A. That's correct.

Q. Not by Jerry Rapoport? (216) A. I prepared the application.

Q. You prepared the financials? A. That's correct.

. . . . .

(217) Q. I see. Did Mr. Rapoport ever walk you down to the SBA and introduce you to anyone at the SBA and say, "Mr. Blonder represents Smugglers Attie. I think that you should give their loan every good consideration"? A. No, he did not.

*Joseph Blonder--for Government--Cross*

(218) Q. Did he ever walk you down to the Bank Leumi, to Mr. Gazziano, and say, "As you know, Mr. Blonder represents Smugglers Attie. I think it's a good loan. I think you should give the loan all due consideration"?

A. I don't believe so.

Q. Did Gazziano ever tell you that Rapoport had paid Gazziano money? A. No.

Q. Mr. Gazziano was at the closing, is that right? A. Yes, he was.

Q. And Mr. Rapoport was at the closing, is that right? A. That's correct.

Q. The closing documents were reviewed by the loan officer, Mr. Gazziano? A. I believe so.

Q. Sure. This Smugglers Attie, Inc. application for a loan, was that reviewed at the closing? A. I believe it was.

Q. And Mr. Rapoport was sitting right there, wasn't he? A. He was sitting there.

Q. And Mr. Gazziano was sitting right there? A. Yes, he was.

(219) Q. Did Mr. Gazziano say that Item No. 10 was false? A. No.

Q. Did he say that Mr. Rapoport's name should be in there? A. No.

Q. Did you tell Mr. Inspector that Mr. Rapoport's name should be in there? A. No.

\* \* \* \* \*

(230) The Court: You see, it is hard to make money easily and I think any practical juror is going to recognize, as the Court does, that people don't get

*Gerald Stolar—for Government—Direct*

all this money for not doing something. And if they are doing something they ought not to be doing, they have a motive not to have their (231) names in the application and it is just about as simple as that.

This is an awful lot of money for doing nothing.

\* \* \* \*

(232) GERALD STOLAR, called as a witness by the government, being first duly sworn, testified as follows:

*Direct Examination by Mr. Cutner:*

\* \* \* \*

(234) Q. Mr. Stolar, where did you meet Mr. Rapoport?

A. The first time I met him was in the offices of our company.

Q. Who was present at the meeting? A. Mr. Charles Bernstein, secretary-treasurer of the (235) company, and Mr. Harry Liederman, who was vice president of sales, who is now deceased.

Q. Mr. Liederman is deceased? A. Yes.

Q. Is Mr. Bernstein still with the company? A. Yes, he is.

Mr. Fleming: Will you fix a time, your Honor?

The Court: Well, a time should be fixed but you will get a chance to cross-examine.

Mr. Cutner: I was just getting to that.

The Court: Let's go.

Q. The time of the meeting, Mr. Stolar, when the meeting occurred? A. In January of 1973.

*Gerald Stolor—for Government—Direct*

Q. And how did you come to be meeting Mr. Rapoport at this time? A. Well, as I told you, the company had an urgent need for raising money, and through a contact of Mr. Liederman's, we were put in touch with Mr. Rapoport.

Q. Who said what at the meeting in your office? A. All of the officers of the company outlined our financial position to Mr. Rapoport explaining fully what our business was about, showed him financial statements with regard to the position of the company, explained that (236) we were looking for a loan, and wanted to know whether or not he could be of any assistance to us.

(237) Q. Did you tell him what kind of money you were looking for? A. Yes.

Q. What did you say? A. We told him we were looking for money in the area of \$250,000 to \$300,000.

Q. What did Mr. Rapoport say in response to your presentation? A. Well, he asked a number of technical questions concerning our financial statement and then said that we had a very tough situation here and that there was a lot of debt owed by the company and that he would have to reflect on whether or not he could be of any assistance to us, with the possibility of an SBA loan.

Q. Was there any discussion at this time about Mr. Rapoport becoming a financial or business consultant for your company? A. No, sir.

Q. Did you meet again with Mr. Rapoport? A. Yes, sir.

Q. When was that? A. About a week later.

Q. Where was the second meeting? A. On the premises of Ideal Precision Meter Company.



*Gerald Stolor—for Government—Direct*

(238) Q. And who were the people present at the meeting? A. Myself, Mr. Bernstein, the secretary-treasurer, and Mr. Liederman, the vice president of sales, now deceased, and Mr. Rapoport.

Q. What was said at this meeting and by whom? A. Well, Mr. Rapoport said he had gone over our figures pretty thoroughly and he felt that we had an item of collateral that wasn't presented in our financial statements. This item of collateral was our tooling and equipment.

Q. What do you mean by "tooling"? A. The tooling are these devices that make the parts that we use to manufacture the product. It would be a die or a mold, items such as this.

Q. What was the value of the tooling? A. Well, the value of the tooling had been depreciated in accordance with normal accounting practice. So the value on the balance sheet was in the area of \$100,000.

• • • • •

(239) Q. Am I correct that the piece of equipment might have a value on the market even though it is carried on your books as zero or at some small amount? A. Yes.

Q. And is that what Mr. Rapoport was telling you? A. Yes.

Q. I wonder if you could expand a little bit on what Mr. Rapoport had to tell you at that time about the tooling and equipment on your books. A. Well, the tooling and equipment—

(240) The Court: What he told you is what the question is asking. What did he tell you in substance about the tools and equipment?

*Gerald Stolor—for Government—Direct*

The Witness: That we should have the tooling and equipment reappraised and use the appraised value as a collateral for a loan application.

The Court: Was this a very old company at that time?

The Witness: Well, the company was originated in the late 1950's. The tooling had been bought each year of its existence. The tooling was all various ages.

Q. Would you say that the tooling you had, the tooling and equipment on your premises, was an asset which Mr. Rapoport in a sense discovered? Is that a fair statement?

A. Well, he didn't discover the tooling. We knew we had the tooling. What he had recommended was having it reappraised.

Q. I see. All right.

Now, apart from the discussion at your second meeting with Mr. Rapoport concerning the tooling and equipment, did you discuss anything else? A. Yes.

Q. What else was discussed? A. Mr. Rapoport stated to us that he wanted a fee (241) of 10% of the loan, if he was able to secure one for us.

And I said that that's too much money to pay.

And he said, "Well, that's the fee that I would charge to you."

And I said, "Well, we have had an awful lot of prior contact with other people who had said they could do many things for us," I says, "but none of them ever materialized."

I said, "If you are really that good, I could see paying that, but only as part of a consulting arrangement, that's

*Gerald Stolar—for Government—Direct*

the only way I could justify that type of expenditure for this organization."

And he said he would be willing to participate in one, in a consulting agreement.

Q. Did you discuss the amount of money that you would seek to borrow? A. Well, I told you that we had outlined our needs between \$250,000 to \$300,000, and he said under SBA provisions that we probably could go for \$388,000 if we wanted to.

We said that we wanted to think about that but chances are we probably would.

Q. Now, did you reach an agreement with Mr. Rapoport concerning services to be rendered to your company? (242)

A. Yes.

Mr. Cutner: May I have this marked as Government's Exhibit 7 and this as Government's Exhibit 8 for identification.

(Government's Exhibits 7 and 8 marked for identification.)

Q. Mr. Stolar, I am showing you Government's Exhibit 7 for identification.

Do you recognize that exhibit, sir? A. Yes, I do.

Q. What is Government's Exhibit 7? A. This is the consulting agreement that Ideal Precision Meter Company entered into with Mr. Rapoport.

Q. Was it signed by yourself? A. Yes, it is.

Q. And by Mr. Rapoport? A. Yes, it is.

Mr. Cutner: Your Honor, the government offers Exhibit 7.

*Gerald Stolar—for Government—Direct*

Mr. Fleming: No objection, your Honor.

The Court: Received.

Mr. Fleming: May we note the date, February 7, 1973?

(Government's Exhibit 7 received in evidence.)

(243) Mr. Cutner: May I, your Honor?

The Court: Yes, certainly.

(Mr. Cutner read to the jury from Government's Exhibit 7 in evidence.)

(244) Q. Mr. Stolar, when was that agreement entered into with Mr. Rapoport (handing Government's Exhibit 7 in evidence)? A. February 7, 1973.

Q. And who wrote the agreement? A. The draft of it was written by myself and then sent to Mr. Rapoport for his comments.

Q. And did Mr. Rapoport make any additions or changes to the agreement? A. There was a few editorial comments.

Q. Do you remember any of them specifically? A. Yes. I do remember, under 3.2, where we said, "The company may, by written notice, cancel this agreement at any time," he added on the phrase that we should not be entitled to any refund.

Q. That was Mr. Rapoport's phrase, "No refund"? A. Yes.

Q. This agreement was entered into after your second meeting with Mr. Rapoport? A. Yes.

Q. Mr. Stolar, when was Mr. Rapoport to be paid? A. Well, we had, by the agreement, until the end of the first year to pay him or we could make a lump sum payment at



*Gerald Stolar—for Government—Direct*

a lower rate. Obviously, we couldn't pay him (245) unless we received the loan. We wouldn't have had the money.

Q. Was the payment on this agreement contingent upon your obtaining the loan? A. Yes.

Q. Now, what happened next with respect to the proposed SEA loan? A. We had our tooling reappraised and we proceeded to write up a financial plan for the company describing what the objectives were for the years ahead and how the money was to be used.

Q. What did Mr. Rapoport do, if anything, during this period of time? A. Mr. Rapoport did give some advice with regard to the writeup of the plan. He also said that he was going to explore what bank to take the loan out through.

And I recommended to him that we deal with First National City Bank, which had been handling the finances of Ideal ever since its inception, and he said okay, he would explore that also.

Q. Did he tell you whether or not he had contacted banks? A. I don't recall that specifically.

Q. Now, Mr. Stolar, I am showing you Government's (246) Exhibit 2 in evidence and I ask you if you recognize that exhibit. A. Yes. That was the application form for the SBA loan.

Q. The SBA application form? A. Right.

Q. Did you show him that application? A. Yes, I did.

Q. And who prepared the application? A. This was prepared at our offices, and then I sat down and went over it with Mr. Rapoport.

Q. When did you go over it with Mr. Rapoport? A. Prior to its submission.

*Gerald Stolor—for Government—Direct*

Q. All right. Do you recall the date that it was submitted? A. Well, this is dated March 14, 1973.

Q. Was it submitted at or about that time? A. Yes.

Q. And this was to the First National City Bank? A. Yes. So it would have been within a day or two of this.

(Mr. Cutner read to the jury from Government's Exhibit 2 in evidence.)

Q. Now referring your attention, Mr. Stolar, to (247) Item No. 10 of Government's Exhibit 2, the space calling for attorney, accountant and other parties, that bears the name Harold Wapnick. Was Mr. Wapnick an accountant for your company? A. At that time he was.

Q. Did you in your review of the application form, Government's Exhibit 2, discuss Item No. 10 with Mr. Rapoport? A. Yes, I did.

Q. Tell us, please, what did Mr. Rapoport say and what did you say? A. I asked Mr. Rapoport whether or not his name should go on here as indicated in that paragraph, that anybody participating here's name should be spelled out. And I was told by Mr. Rapoport that as a former SBA employee this is not necessary.

I asked him, I says, "Why isn't it?" He said, "It just isn't necessary. That's what you are paying me for, to perform as a consultant."

And I accepted that.

. . . . .

(250) Q. Did you ask Mr. Rapoport for any explanation as to why his name should not go under item 10? A. I

*Gerald Stolor—for Government—Direct*

asked him if he was sure that we did not have to put his name down and as I have testified before, he said, "I'm a former SBA employee, I am your consultant, and this is why I'm telling you that there is no need for it."

He didn't give me any other reason than that, just said it is not necessary.

Q. Referring again to Government's Exhibit 7, the consulting agreement that you signed with Mr. Rapoport a couple of months earlier, was the work on the loan application did that come under the consulting agreement you had with him? A. Yes.

Q. That was part of the consulting services? A. Yes, under the 1.1 paragraph.

Q. Now referring to item 10, Mr. Stolar, on the loan application, were you aware that you were making a false statement when you signed that application? A. No.

Q. Reading from item 10: "Names of attorneys, accountants and other parties, the names of all attorneys, (251) accountants"—

Mr. Fleming: I object to this. There is no need for this, unless he is arguing with this witness.

The Court: Well I'll permit him to do it.

Read it quickly.

Mr. Cutner: "The names of all attorneys, accountants, appraisers and agents and other parties."

Q. Did Mr. Rapoport fall within any of those categories, Mr. Stolar? A. Will you read that again, please?

Q. "Attorneys, accountants, appraisers, agents and all other parties"— A. He was a consultant. I did not hear that word in there.

*Gerald Stolar—for Government—Direct*

Q. —“engaged by or on behalf of the applicant”—that’s you, right, the applicant? A. Right.

Q. Was he engaged by you? A. Yes.

Q. And he was a party engaged by you? A. Consultant, yes.

Q. —“for the purpose of rendering professional or other services of any nature whatever”—

Was he engaged for the purpose of rendering any (252) service to you? A. Yes.

Q. —“in connection with the preparation or presentation of this application to bank”—

Was he engaged for that purpose by you? A. He was engaged for the purpose outlined in our consulting agreement, which included assisting us on getting the financing, yes.

Q. The answer to my question is yes? A. Yes.

Q. —“and all fees or other charges or compensation paid or to be paid therefor.”

Was Mr. Rapoport paid or to be paid for services in connection with the preparation or presentation of the application? A. That was part of his duties, yes.

Q. The answer to my question is yes?

Let me ask you again.

Mr. Fleming: I take it the answer to the question that Mr. Stolar gave, if your Honor please—

The Court: Well, the jury can observe the witness and listen to the answer.

(253) Q. Now, Mr. Stolar, were you or were you not aware that you were making a false statement when you signed this application? A. I was not aware.



*Gerald Stolor—for Government—Direct*

Q. How long have you been reading and writing English, sir? A. Since the age of five.

Q. Did you have any difficulty in understanding Item 10 when you read it? A. No.

Q. And as I just read it to you? A. No.

Q. Why is it that you thought that you were not making a false statement? A. I questioned Mr. Rapoport, who was our consultant, with regard to whether or not his name had to be specified there, and he said no. I said, "Are you sure?" And he said yes.

Based on that, I made a judgment not to include it.

\* \* \* \* \*

(258) Q. Now, following the closing on the loan, did you have further discussions or consultations with Mr. Rapoport? A. Yes.

(259) Q. And what was the first such consultation you had? A. Subject matter?

Q. Well, when and what it was that you discussed. A. I don't remember the approximate date. It was several months after the granting of the loan. I called Mr. Rapoport and told him that we had an opening in our board of directors and I asked him if he would like to serve.

Q. What did he say? A. He said he was very flattered but he couldn't properly devote the necessary time to it. He said he would be glad to live up to his end of the consulting agreement but unfortunately he couldn't accept the offer to serve on the board of directors.

Q. Did you ask for any consulting services at that time? A. On that particular call, no.

Q. Did you make another call to Mr. Rapoport? A. Yes.

*Gerald Stolor—for Government—Direct*

Q. And when was that? A. That was a little less than a year after the loan was granted.

Q. That was a telephone call? (260) A. Yes.

Q. And what did you say to Mr. Rapoport and what did he say to you on that telephone call? A. I told him we were considering the acquisition of another company that was in serious financial trouble and I outlined the circumstances to him and I wanted to find out whether he thought that any money could be raised for this operation if we decided to pursue it.

His advice to me was that it was a situation that would not permit raising of money.

Basically, it was a business that was engaged in government activities that was on the verge of bankruptcy.

He said he didn't see how he could be of any help nor anybody else.

Q. This was all in the one telephone call? A. Well, it might have been two phone calls. I can't recall specifically. But that was the nature of the subject.

Q. Did you provide any documents or materials to Mr. Rapoport in connection with that? A. I had documents. I read numbers to him.

Q. You read numbers to him? A. I read numbers over the phone to him.

(261) Q. Apart from the two calls that you just mentioned, did you have any other discussions with Mr. Rapoport? A. There were some other phone conversations. I do not recall specifically what the subject matter was. I know he called me once, I can recall now, wanting to know whether our stock was being traded, whether he could be of

*Gerald Stolar—for Government—Cross*

any assistance in this area, and I said no, that we had a delay due to a change in our fiscal dates, and we didn't have an annual report out yet.

Q. Mr. Stolar, is what you have just related in the past couple of minutes the sum and substance of the consulting services that Mr. Rapoport rendered to you? A. Yes, to date.

. . . . .

(264) *Cross Examination by Mr. Fleming:*

. . . . .

(267) Q. Is your loan current, that is, are you making payments on your SBA loan? A. Yes.

Q. By the way, on the books of account of your company, am I correct that the \$39,050 which was paid to Mr. Rapoport, represented by that check, was booked as a prepaid expense? A. Yes.

Q. And that's been amortized over three years? A. Yes.

Q. And that means it's booked as 39,050 prepaid and as the three years go by that amount is reduced, is that correct? A. Yes.

Q. That is how it is carried on your books? A. Yes.

Q. And as far as you are concerned, does that reflect the truth? A. Yes.

Q. All right. The SBA loan was disbursed by National City Bank? A. Yes.

Q. Now known as Citibank, is that right? A. Yes.

(268) Q. And you had had, your company had a prior relationship with National City Bank, is that correct? A. Yes, we did.



*Gerald Stolor—for Government—Cro. :*

Q. Who was the loan officer? A. At the bank at the time?

Q. Yes. A. I think it was a Mr. Blum.

Q. Was the SBA loan done through him? A. Yes.

Q. When you told Mr. Rapoport to go to the National City Bank did Mr. Rapoport say, "No, I've got to go to my own bank"? A. No.

Q. He went to National City Bank? A. Yes.

Q. He didn't find that bank for you? A. No, he did not.

Q. All right. There was some questioning about the consulting fee not being paid unless the loan were granted; do you recall that testimony? A. Yes.

Q. Am I correct that if the loan had not been granted there would have been no business to consult? A. That is quite correct.

. . . . .

(270) Q. When you first met Mr. Rapoport, Mr. Bernstein was there and you presented Mr. Rapoport with the financial statements of your company and talked to him about the financial condition of your company, and asked him whether he thought SBA financing was available, is that about right? A. Yes.

Q. And he took the financials back and he examined them, and he came back to you, is that right? A. Yes.

Q. And he pointed out that your equipment, while carried at a depreciated value on your balance sheet, might well be worth much more than the value it was carried at?

A. He asked if it was.

Q. If it was.

An appraisal was done and it was found that it was? A. Yes.



*Gerald Stolor—for Government—Cross*

Q. And he said, "You can use that as collateral, therefore I think you can make an application"? A. Yes.

. . . . .

(273) Q. The whole point is what you book something at after you depreciate it for all these reasons can be less than the property is worth if you were to sell the property? A. Yes.

Q. Just like your house? A. Yes.

(274) The Court: And that's true of most factory equipment, isn't it, in a good business, a well-run business?

The Witness: Yes, it is, your Honor.

Q. And this was something that you had not recognized in attempting to finance, obtain financing; you had not recognized this until Mr. Rapoport pointed it out to you, is that right? A. Yes.

Q. And your accountant had not recognized it? A. Right.

Q. And Mr. Bernstein, your partner, has not recognized it? A. Right.

Q. And Mr. Rapoport recognized it and brought it to your attention? A. Yes.

Q. And it was the appraisal of that tooling, as you call it, which provided the collateral for your SBA financing? A. Yes.

Q. All right.

Now let me ask a question: Is it fair to say that obtaining that SBA financing saved your company? A. Yes.

. . . . .

*Charles Bernstein—for Government—Direct*

(276) CHARLES BERNSTEIN, called as a witness by the government, being first duly sworn, testified as follows:

*Direct Examination by Mr. Cutner:*

. . . . .

Q. Well, how did the first meeting conclude? A. Well, the first meeting concluded with the fact that he definitely said that he can probably do something for us in getting us financial assistance with that SBA loan and that we would recapitalize our assets, and then we would have another meeting and we will see just how things are and then he can start the ball rolling as far as getting us financial help.

Q. You had a second meeting with Mr. Rapoport? A. Yes, we had a second meeting.

Q. That was also out at your office? A. I believe it was.

Q. And the same people were present? A. I believe we were, yes.

(280) Q. What was the discussion at that second meeting? A. Well, after we had recapitalized and we had re-evaluated our net assets, he said that he feels as though we can get this SBA loan and that we could start the ball rolling, and also he wanted at that time, I believe it was a 10% fee for this loan.

At that time we felt as though it was quite extortionate, and that we wanted then to try to put him on as our financial consultant and work for us on a, probably a three-year contract agreement that we would want to draw up.

Q. You said 10%. 10% of what? A. 10% of the proceeds that we would get from the SBA loan.

*Charles Bernstein—for Government—Direct*

Q. How much money did you expect to get on the loan?

A. Well, we were going for \$388,000, but at that time we felt as though it was quite extortionate and we tried to get it for less, but then we decided to incorporate his services with us to be able to secure his services for three years at a rate of \$15,000 a year.

Q. Did you enter into an agreement with Mr. Rapoport?

A. Yes, we entered into an agreement, I believe it was some time in February of that year.

Q. Was that written or oral? (281) A. That was written.

. . . . .

Q. Did you have a discussion with Mr. Rapoport about item 10? A. Yes. When we came to that, we asked Mr. Rapoport (282) why he doesn't, why we don't put his name down.

So he told us it isn't necessary at all, being a former SBA man, it isn't necessary for him to have his name down.

Q. What did you say to that? A. Well, I said, "Are you sure about that?"

I asked him this a few times, that is, my associates and I. He said "Yes," he says, "I'm your legal adviser and your financial adviser, I'm telling you it isn't necessary," so we let it go at that.

Q. Take a look at item 10 with me, Mr. Bernstein.

Was Mr. Rapoport an attorney, accountant, appraiser, agent or other party engaged by or on behalf of the applicant? Was he engaged by you— A. Yes, he was an attorney.

Q. —for the purpose of rendering professional or other services of any nature whatever to you?

*Charles Bernstein—for Government—Direct*

Mr. Fleming: You can't break it down this way. He has to read the whole thing.

The Court: Yes, I think you ought to read the whole sentence. Read the whole sentence and ask him whatever you want to ask him.

Q. "10: Names of attorneys, accountants and other parties. The names of all attorneys, accountants, appraisers, (283) agents, and all other parties, whether individuals, partnerships, associations or corporations, engaged by or on behalf of the applicant, whether on a salary, retainer or fee basis, and regardless of the amount of compensation, for the purpose of rendering professional or other services of any nature whatever to applicant in connection with the preparation or presentation of this application to bank in which SBA may participate or any loan to applicant as a result of this application and all fees or other charges or compensation paid to or to be paid therefor or for any purpose in connection with this application."

Did Mr. Rapoport fall in that category, Mr. Bernstein?

A. Yes, he was our attorney at that time.

(284) Q. And he was rendering services to you in connection with the application, correct? A. Yes.

Q. And you knew you were making a false statement on that application, correct? A. Well, I had asked my attorney whether it was all right.

Q. You knew you were making a false statement on the application, correct? A. Well, I suppose it is correct. But as I said before, I had asked, on advice of counsel, whether it is all right. He says, "It is perfectly OK. My name does not have to appear there."



*Charles Bernstein—for Government—Direct*

Q. You knew you were making a false statement, correct? A. Well, I wouldn't say it is false, because I had asked my attorney and he said it was perfectly all right.

Q. Did Mr. Rapoport give you any explanation as to why his name did not have to be listed? A. He said he was an ex-SBA man and his name does not have to appear.

. . . . .

(286) Q. Now, you told us that Mr. Rapoport was going to be a consultant with you for three years, right? Was that the deal? A. Yes. We had that deal. We were to pay him either \$15,000 a year or, if we paid him in advance, we got a discount of approximately, I think it was about \$6000 or something.

Q. You paid him \$39,000 instead of \$45,000 because you paid him in advance? A. That's right.

Q. And he was going to consult for three years? A. Yes.

Q. All right.

Tell us the consultation that he gave you? A. What's that?

. . . . .

(287) Q. Mr. Bernstein, what I'm asking you about is the period following the closing of the loan, after you got your money. A. Yes.

Q. I'm interested in having you tell us what consultation services Mr. Rapoport provided to your company. A. Well, we had the occasion, on one occasion, I know, where we had the opportunity of meeting or taking over some electronic company, and we asked for his advice on something like that.

*Charles Bernstein—for Government—Direct*

He delved into the matter and he suggested that we don't touch it because it would prove to be a very bad (288) investment. And we took his advice on that and we dropped it.

Q. What did he do to delve into the matter?

Mr. Fleming: May he finish his answer?

The Court: Yes, the witness ought to be permitted to finish his answer.

Mr. Cutner: Sorry, your Honor.

A. He checked out the company and he gave us his professional advice and he told us to drop the matter, it wouldn't prove to be a good takeover, and we followed his advice and we didn't do anything about it.

Q. What else did Mr. Rapoport do for you? A. Well, there were a few occasions. We had the occasion to call upon him for certain advice as far as whether we can make a market in our stock or something of that nature.

But there weren't many things that we did. And thank God, we got the loan and we were able to turn the business around and be able to concentrate on the business and make a success out of it.

Q. The loan, that was the main thing? A. It was not the main thing. But we didn't have the occasion to come to him for as many advices as we had hoped to. But we did on occasions here and there call upon him for his advice, which he rendered, and at the same time (289) we were quite satisfied with it.

• • • • •

*Charles Bernstein—for Government—Cross**(291) Cross-Examination by Mr. Fleming:*

\* \* \* \* \*

Q. Now, did Mr. Rapoport find the bank that lent you the money that was guaranteed by the SBA? A. Yes.

Q. He found it for you? (292) A. No, that was our bank. We dealt with that bank.

Q. Would you answer my question? Did he find you the bank? A. No. That was our bank.

Q. Did he find you an officer at the bank? A. That was our officer at the bank.

Q. Did he take you to the SBA, Mr. Bernstein? A. Took probably my associate. I never went.

Q. What do you mean, he took? Why do you say he took your associate? A. Because I never went to the SBA.

Q. Then why do you say he took your associate? A. You asked me whether he took me? No.

Q. All right. Good. A. No.

Q. Never introduced you to anybody at the SBA, did he? A. No.

Q. Now, who prepared the financial statements for the SBA for the loan application? A. We did.

Q. Mr. Wapnick? A. Yes.

Q. He was your accountant? (293) A. He was the accountant at the time.

Q. You helped? A. No. The accountant did that.

Q. All right.

Who prepared the workup describing the nature of the business? A. We did.

Q. OK.

You say Mr. Rapoport helped you on that.

Did you testify that way? A. Helped us on that?

*Charles Bernstein—for Government—Cross*

Q. Yes. A. I don't recall I said that.

Q. Did you testify on direct examination that the application was prepared by the company with Rapoport's help?

A. Yes.

Q. You did? A. Yes.

Q. What help did he give you? A. After we prepared it, he went over it and saw that everything was all right.

Q. You mean he saw that it was in order? A. Yes.

(294) Q. That, for example, you had two years' audited statements there? A. No. We prepared this and he looked it all over.

Q. And said it was in good form? A. Good form.

Q. For submission to the bank? A. That's right.

Q. Did your company have an attorney at that time? A. Yes, we had an attorney.

Q. What was his name? Was his name Jerry Rapoport? A. No. His name was—yes, we had Jerry Rapoport. We took him on as our attorney.

Q. Did you have an attorney before you met Mr. Rapoport? A. Yes, we had an attorney.

Q. What was his name? A. His name was Steve Hill.

Q. Did you ask Steve Hill about this agreement? A. No. I asked Jerry Rapoport about this.

Q. And you said "Should your name be in this box 10," right? A. Yes.

Q. And he said no? A. No. "It was not necessary."

(295) Q. And didn't he tell you no, it is not necessary because he was being paid as a consultant? A. As a con-



*Charles Bernstein—for Government—Cross*

sultant. He just told me it wasn't necessary because he was an ex-SBA man and it wasn't necessary.

Q. Did he tell you that it was not necessary to put his name there because any fee he was to receive he was to receive as a consultant to your business? A. As a consultant, yes.

Q. To your business? A. Yes.

Q. That's what he told you? A. Yes.

Q. Didn't he tell you that he did not want to receive a fee for any advice he had given you on the SBA loan? A. He just received a fee as a consultant.

Q. And, therefore, it does not have to be disclosed? A. Which was part of their consulting agreement.

Q. Now look at the certification. And I read:

"Certification A. I hereby certify that the applicant has read SBA policy and regulations concerning representatives and their fees and has not paid or incurred any obligation to pay directly or indirectly any (296) fee or other compensation for obtaining the loan hereby applied for."

Have I read correctly? A. Yes.

Q. Did Mr. Rapoport obtain that loan for your company? A. He helped us obtain it, yes.

Q. What did he do? A. Well, he did all the detail work. He helped us—he went ahead and he did all the preliminary work that had to be done to obtain the loan.

Q. Well, that's what I'm asking you. What preliminary work did he do? A. Well, whatever had to be done, he did for us.

Q. What did he do for you, aside from suggesting that you appraise your tooling to see if it had sufficient collateral for the loan? A. Well, we appraised all that. We

*Charles Bernstein—for Government—Cross*

brought up the net worth for a sizeable amount that we were eligible to get this loan.

Q. And what else did Mr. Rapoport do to obtain the loan for you? A. He took care of all the legal work as far as the bank is concerned and he helped us negotiate the (297) entire loan with the SBA.

Q. What did he negotiate between you and the SBA, to your knowledge? A. Well, I don't know what he did to negotiate. But what he did was actually make things in order so we can get this SBA loan.

Q. You mean after you prepared—he told you what had to go in the application and you prepared the application and he looked at it and said, "Good. File it." A. Well, I don't follow your line. We went ahead. After he did everything, we went ahead and filed it and then we got the approval of the SBA loan.

Q. I know. And what else did he do to obtain the loan for you? A. I don't know what you mean, what else he did.

Q. Did he go down to the bank? It was your bank. A. Yes.

Q. Did he go down to this bank and say, "Give these people this loan"? A. He did go down to the bank. He negotiated with the bank. He negotiated with the SBA and he got everybody together and we went ahead and we had a closing and we got the loan.

Q. You say he negotiated with the SBA. What do you (298) mean by that? A. Well, he filled out all the papers and he negotiated with the SBA, whatever had to be done, he took care of it for us, and we negotiated with the bank and with the SBA and we got the loan.

*Harold Wapnick—for Government—Cross*

Q. What did he negotiate with the SBA that you know about? A. I don't know. I don't know what he did.

Q. Who did he negotiate with at the SBA? A. Well, I can't answer that question. I don't know.

• • • • •

(303) HAROLD WAPNICK, called as a witness by the government, being first duly sworn, testified as follows:

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(310) *Cross Examination by Mr. Fleming:*

(316) Q. And did you discuss with Mr. Bernstein and Mr. Stolar the Form 4 application for the SBA loan that Electrical Precision made? A. That's correct.

Q. And did Mr. Stolar and Mr. Bernstein both tell (317) you that they had broken no law? A. They said that—

Q. Did they tell you that? A. Yes. They said that, yes.

Q. That they had broken no law. A. They said that they were—they did nothing wrong.

Q. What? A. They said that they had done nothing wrong, after I brought it to their attention again.

Q. And this was a year and a half ago when they told you this. A. Well, after I discussed it with them, I said to them it will be time to discuss this with the U.S. Attorney's office.

Q. And that was after you had read that Mr. Rapoport had been indicted. A. After I had heard—yes. Yes.

Q. Heard. A. No. I read it. I read it in a newspaper.

Q. And they told you at that time, which was more than a year ago, that they had nothing wrong. A. That's correct.

*Eugene Goggi—for Government—Direct*

Q. The payment to Mr. Rapoport was booked on the (318) corporate books as a prepaid expense for consulting?

A. That's correct.

Q. And it was amortized over the three years after the granting of the loan? A. That's correct.

Q. You people at the company had prepared the applications, the financials and the application itself? A. Yes.

Q. And you had applied for the loan at your own traditional bank, the First National City Bank. A. That wasn't—I had nothing to do with that at all.

Q. My question is, did the company use their own bank, First National City Bank, for the loan? A. That's correct, yes.

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(323) EUGENE GOGGI, called as a witness by the government, being first duly sworn, testified as follows:

(323) *Direct Examination by Mr. Cutner:*

\* \* \* \* \*

(326) A. The first time I met Mr. Rapoport was at the Manufacturers Hanover Trust Bank on Madison Avenue with Mr. Schmiedel.

Q. Could you speak up a little bit, Mr. Goggi? When was it that you met Mr. Rapoport? A. At Manufacturers Hanover Trust.

Q. When? A. 1973, some time in the Spring of '73.

Q. Spring, 1973? A. Pretty sure.

Q. Who was present at that date in the bank? A. Walter Newland, myself, Mr. Reed, Mr. Rapoport and Mr. Schmiedel.

Q. Who is Mr. Newland?

\* \* \* \* \*

(327) A. Mr. Newland was our sales manager.



*Eugene Goggi—for Government—Direct*

Q. Who is Mr. Reed? A. Mr. Reed was an officer of the bank.

Q. Who said what at the meeting at the bank? A. Well, after the people seemed to be satisfied that the unit did what it did, said that they would go ahead and Mr. Reed suggested that if I wanted the loan to go through, because several loans had been put through, that let Mr. Rapoport handle the workings of the loan.

Q. Mr. Reed told you to use Mr. Rapoport? A. He suggested it, yes.

Q. What else was said? Did you make a presentation that day of your company? A. At that time I did not, no.

Q. Did anybody? A. The presentation had been made by Mr. Schmiedel.

Q. Did you agree that day to have Mr. Rapoport (328) package the loan for you? A. Yes, I did.

The Court: Was Mr. Rapoport there at this meeting he is talking about?

Mr. Cutner: Yes, your Honor.

Q. What was the discussion when you came to this agreement? What was said? A. That Mr. Rapoport could get the loan, felt they could get the loan on the merits that we had, and we should handle it that way.

Q. Was there any discussion concerning a fee to be paid to Mr. Rapoport? A. Yes, there was.

Q. Tell us that discussion, Mr. Goggi. A. Well, as best I could remember it, it was a fee of \$28,500 to be paid for the loan, getting the loan and consulting fees for a period of two years.

*Eugene Goggil—for Government—Cross*

Q. That was the agreement that you made with Mr. Rapoport? A. Yes.

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(340) *Cross Examination by Mr. Fleming:*

• • • • •

(353) Q. Mr. Rapoport ever take you, Mr. Goggi, or anyone at your company, to anyone at the SBA to argue in favor of your loan? A. Never took me. I don't remember, don't know if he took anybody else from the company, but I doubt it.

Q. And you said that the bank, Manufacturers Hanover Trust, had you down to the bank and had Mr. Rapoport there already? A. Yes.

Q. Mr. Schniedel found the Manufacturers Hanover (354) Trust Company, did he not?

Mr. Cutner: If he knows, your Honor.

The Court: If he knows.

A. I don't know.

Q. Did Mr. Schniedel tell you he had found the Manufacturers Hanover Trust Company? A. I don't remember whether he said he found it or—all I know is I met with them at the bank.

Q. Mr. Rapoport prepared the financial statements that were submitted on your loan? A. I don't know.

Q. Did he prepare the history of your company which was submitted in support of your loan? A. I understand that he did.

*Sheldon Horowitz—for Government—Direct*

Q. Who told you that? A. Because I had to pay \$275 to somebody to write whatever was written.

Q. Who did you pay the \$75 to? A. The man that Mr. Rapoport had write the thing up.

Q. What was his name? A. I don't know, but it is on one of the checks some place.

Q. On one of the checks? A. Yes.

Q. Did Mr. Rapoport do it? A. I don't believe so.

(355) Q. What else did he do in connection with the loan, to your knowledge? A. That's all I know.

\* \* \* \* \*

(375) SHELDON HOROWITZ, called as a witness by the government, being first duly sworn, testified as follows:

(375) *Direct Examination by Mr. Cutner:*

Q. Mr. Horowitz, what is your business or occupation?

A. I am a comptroller for a corporation by the name of Foodways National.

Q. What is that company? A. They manufacture frozen food products.

Q. Are you a CPA, Mr. Horowitz? A. Yes, I am.

Q. How long have you been a CPA? A. Since 1965.

Q. How long have you been with the Foodways? A. Since 1973.

Q. Do you do outside accounting work apart from your work at Foodways? A. Yes, I do.

Q. Did there come a time when you did some work for a company named Goggi International? A. Yes.

Q. During what period of time was that? (376) A. From the Fall of 1973 until the Summer of 1974.

\* \* \* \* \*

*Sheldon Horowitz—for Government—Cross*  
*Allan Pollak—for Government—Direct*

(381) *Cross Examination by Mr. Fleming:*

\* \* \* \* \*

(386) Q. Am I correct that you found out after the SBA loan had closed and the loan moneys had been disbursed that an amount of money had been booked on Goggi International's books as a prepaid expense to Mr. Rapoport?  
 A. That is correct.

Q. And the amount booked as a prepaid expense, am I correct, was \$28,500? A. That is correct.

Q. Now, it was booked after the loan was disbursed, isn't that right? A. That is correct.

\* \* \* \* \*

(388) Q. Am I correct that the entire \$28,500 paid to Mr. Rapoport was booked after the loan was disbursed as a (389) prepaid expense? A. That is correct.

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(390) ALLAN POLLAK, called as a witness by the government, being first duly sworn, testified as follows:

(390) *Direct Examination by Mr. Cutner:*

\* \* \* \* \*

(393) Q. How did you come to meet Mr. Rapoport? A. I was introduced to him by a man by the name of Carey Bunin.

Q. Who is Mr. Carey Bunin? A. One of my suppliers. He had a service organization which serviced my greeting card racks in stores throughout the country.

Q. Where did Mr. Bunin introduce you to Mr. Rapoport?  
 A. At Mr. Rapoport's apartment at 470 Park Avenue.



*Allan Pollak—for Government—Direct*

Q. Who was present at the meeting with Mr. Rapoport?  
A. Mr. Carey Bunin, Mrs. Gail Jowers, Mr. (394) Rapoport and myself.

Q. Who is Mrs. Jowers? A. She is my associate, or was my associate.

Q. Your business associate? A. Yes, sir.

Q. Did you also have a personal relationship with her?

A. Yes, I did.

Q. Was that an intimate relationship? A. Yes, sir.

Q. Now, Mr. Pollack, did you have a conversation with Mr. Rapoport that day? A. Yes, I did.

Q. How long did the conversation last? A. About two, two and a half hours.

Q. All right.

Now tell us as best as you can recall—

Mr. Fleming: Can we fix the time, if your Honor please?

The Court: Yes, certainly. Let's fix a time.

Q. It was May 21st, right?

Mr. Fleming: March 21st.

The Court: Which is it, gentlemen?

(395) Mr. Cutner: March 31st.

The Court: '73?

Mr. Cutner: '74.

Q. Am I right, Mr. Pollak? A. Yes. March 21, 1974.

Q. Do you recall what time of day it was? A. To the best of my recollection, Mr. Cutner, around 7 o'clock in the evening.

*Allan Pollak—for Government—Direct*

(396) Q. As best as you can recall, tell us what you said to Mr. Rapoport and what he said to you. A. I was introduced to Mr. Rapoport and we made a little bit of small talk. I asked Mr. Rapoport if he knew why we were here and he said yes.

And we had previously sent our financial papers to Mr. Rapoport and I told Mr. Rapoport that I had understood that he had thrown the financial papers away and I had a new set of financial papers, and I told him that we were there for the purpose of talking about an SBA loan.

Q. Did he ask you whether you had attempted to get money in other ways? A. Yes, he did.

Q. What was said on that subject? A. I told him that we had gone other routes and that we had been singularly unsuccessful in achieving any success there.

And I asked Mr. Rapoport if he could get us the loan because I had—I told him I knew that he was an individual who knew about how to get loans.

What I had been led to believe was that getting an SBA loan was a very involved thing.

Q. Mr. Pollak, stick with just what was said.

The Court: If that wasn't said, I'll strike it (397) out.

Mr. Fleming: That's all I was going to say. If it was said, it was said.

The Court: Was that said by you or by somebody else during that discussion that you are telling us about?

*Allan Pollak—for Government—Direct*

The Witness: I don't remember that well, your Honor.

The Court: All right. Strike it out. The jury will disregard it.

Q. Mr. Pollak, you say "the loan." How much money were you looking for? A. \$350,000.

Q. Did you tell Mr. Rapoport that? A. Yes, sir.

Q. Did you discuss with Mr. Rapoport his qualifications and credentials for getting this loan? A. Yes, sir, I did. I asked him if he could in fact get us the loan.

Q. What did he say? A. I had showed him the papers.

Q. What did he say? A. He said, "It is doable," were his words. "I secured many, many loans and have never missed."

Q. Did he say whether he was familiar with SBA (398) loans? A. Yes, sir, he said he was very familiar.

Q. All right. Can you go on with the conversation? A. We had discussed how to go about doing the loan, and then at one point I asked him how much he charged for his services, and he informed me that he charged 10 per cent of the loan. And he also went on to add that this was to be paid on the front end the day I got the money, as he put it, "in green."

I—

Q. What was your response to that? A. I told him I thought that was very high, "That's a lot of money to pay, \$35,000 for securing a loan."

Mr. Rapoport said to me that—he pointed out that I had been unsuccessful in getting the money any other place and it was up to me, if I wanted to do it, fine, if I didn't want to do it, okay, fine.

*Allan Pollak—for Government—Direct*

Q. Did you explain your financial situation to Mr. Rapoport at that point? A. Oh, yes. Mr. Rapoport knew that we were in desperate straits. And I asked him, if I did go ahead with it, how fast could I get the loan. And his comment was, "Between 30 and 45 days," which would have put it somewhere at the end of May.

(399) And I said, "All right. I don't seem to have any choice."

Mr. Fleming: It sounds like the end of April to me, your Honor.

The Court: Well, you'll have a chance to cross-examine the man.

Mr. Fleming: I might forget that.

The Witness: And I told Mr. Rapoport I didn't seem to have any alternative and I would go ahead with the loan, or go ahead with putting the papers through with Mr. Rapoport's help.

We discussed what I should do. I was completely unaware of how SBA loans were supposed to be gotten.

Q. What was said as to what you should do? A. Well, he told me that he was going to give me some papers and I should follow his instructions and do them as fast as I could.

He then said that the fee would be put down as a consultant's fee. And I asked him what he meant by that, and he said that, "Well, we'll call it a consultant's fee and you can contact me a few times a year for two years."



*Allan Pollak—fo. Government—Direct*

And I said to Mr. Rapoport that would be rather difficult since he was in New York and I was in Chicago and I intended to keep my company in Chicago, and told him (400) that I did understand that I would have to open up some kind of office in New York, and asked him what kind of office I would have to open in New York.

He said, "Well, all you have to do is take a simple one-room office and pay a hundred dollars a month for a couple of months so at least you have a New York address."

And I did not belabor the consultant conversation with him because at this point I felt it was—

Mr. Fleming: Objection.

The Court: Yes. I'll strike out what he felt.

Mr. Fleming: I would like to strike out "I did not belabor" too.

The Court: All right. I'll strike out the entire answer.

Just the conversation. Have you finished the conversation at that meeting?

The Witness: Not quite, your Honor.

The Court: Go ahead.

Q. Mr. Pollak, was there any discussion at the meeting about Mr. Rapoport—

Mr. Fleming: May we continue with the conversation without the leading, if your Honor please?

The Court: Yes. He can give us the balance of (401) the conversation as he remembers it.

Go ahead and tell us the balance of the conversation.

*Allan Pollak—for Government—Direct*

The Witness: I'm thinking of where I left off, your Honor.

(Pause.)

We discussed the handling of the papers and what additional financial information he would require.

He told me that he would be in touch with me. He, of course, took the pertinent information about where my office was and my telephone number, and so forth, and Mr. Rapoport said that he would be in touch with me and would tell me what to do.

And I must have asked him four or five times—

Mr. Fleming: Objection.

The Court: I'll overrule that objection. He is giving us his best recollection, as I understand it.

You asked him four or five times what?

(402) The Witness: "Can you get the loan?"

And his answer was, "Don't worry. I'll get you the loan."

That was about the end of the conversation, to my recollection.

Q. Do you recall anything else? A. No, sir.

Q. Do you recall any discussion as to what consulting services Mr. Rapoport would be rendering to you?

Mr. Fleming: Objection.

The Court: Overruled.

A. It was never discussed in detail.

*Allan Pollak—for Government—Direct*

The Court. He is asking you about this particular conversation that you testified to.

The Witness: The only thing Mr. Rapoport said was, "We'll put it down as a consultant's fee and we will—you can call me a few times a year for two years."

Q. Was that it on that subject? A. Yes, sir.

\* \* \* \* \*

(408) Q. Mr. Pollak, I am showing you Government's Exhibit 1 in evidence, Small Business Administration application for loan, applicant, Entre Nous Graphics, Inc. Is that the piece of paper you went over with Mr. Rapoport that day? A. One of them, yes. There were a number of pieces of paper.

Q. Was it that specific piece of paper, the one you are holding in your hand? A. I believe so, yes, sir.

Mr. Fleming: What is the number of that exhibit?

Mr. Cutner: Government's Exhibit 1.

Q. Did you discuss that exhibit with Mr. Rapoport? A. Yes.

Q. What was the discussion about the exhibit, Mr. Pollak? A. Mr. Rapoport showed me various places where things were filled in and being filled in on both sides of the sheet, and he indicated, of course, that these were going to (409) have to be signed, and I told Mr. Rapoport that time was of the essence, we really wanted to get this going as fast as possible.

Q. Let me refer your attention to Item No. 10. A. Yes, sir.

*Allan Pollak—for Government—Direct*

Q. Do you see that, Mr. Pollak? A. Yes.

Q. Names of attorneys and so on? A. Yes.

Q. Did you discuss that item with Mr. Rapoport? A. Yes, we did.

Q. Tell us what the discussion was on that item. A. Mr. Rapoport pointed out that the word "None" would have to go into the appropriate box, and I said—I read it and I saw that—

Mr. Fleming: I object.

The Court: I will permit him to say what he said.

Q. Whatever you said to Mr. Rapoport. A. I told Mr. Rapoport that upon reading this thing his name should appear here.

Mr. Rapoport's words were, "If you put my name in here you are not going to get the loan."

Q. What did you say? (410) A. "Why?"

I asked him why.

He just repeated again, "If you put my name in here you are not going to get the loan."

And I said, "But I am going to pay you some money, and that's what this particular paragraph refers to."

And he repeated again, "If you put my name in here you are not going to get the loan."

I got the message.

Q. Mr. Pollak, just what was said, please.

What did you say? A. I said, "All right."

Q. You understood that you were making a false statement? A. Yes, sir.

. . . . .



*Allan Pollak—for Government—Direct*

(416) Q. Directing your attention to the 6th day of June, Mr. Pollak, do you recall what you did on that day? A. I came down to the Justice Department in (417) New York.

Q. To the United States Attorney's office? A. Yes, sir.

Q. And had the government called you in? A. No. I came in voluntarily. I wanted to come in.

Q. That was your decision? A. Yes, sir.

Q. And did you reach any agreement with the government at that time? A. Yes, I did.

Q. What was the agreement? A. That I would tell them all that I knew about what was going on with our loan application and everything I knew with regards to what had happened to date regarding Entre Nous and the SBA loan.

Q. What else were you told? A. I was told that I wouldn't be prosecuted for telling them this.

Q. What else were you told?

The Court: You wouldn't be prosecuted for telling them that or you wouldn't be prosecuted for what you were telling them you had done, which is it?

The Witness: The latter, your Honor. (418) I wouldn't be prosecuted for telling them what I had done.

The Court: All right.

Q. Anything else, Mr. Pollak? A. They asked me if I would assist them throughout the rest of the time that it would take to get the loan and I said I would.

Q. Did you later receive a formal grant of immunity? A. Yes, sir, I did.

\* \* \* \* \*

*Allan Pollak—for Government—Cross*

(465) *Cross Examination by Mr. Fleming:*

\* \* \* \* \*

(467) Q. And you placed the recording device or the bug on your telephone? A. Yes, sir.

Q. And then recorded the conversation? A. Yes, sir.

Q. You had begun—you were doing that pursuant to an agreement which you had made with the United States Attorney's office on June 6th of 1974, isn't that right?

(468) A. I don't understand what you mean by an agreement, sir?

Q. Well, on June 6, 1974 did you go into the office of Assistant United States Attorney George Wilson of the United States Attorney's office in this district? A. Yes, I did, sir.

Q. And did you spend a substantial period of time with Mr. Wilson on that day? A. Yes, sir.

Q. On that day did you agree to wear tape recording devices or employ tape recording devices as an agent of the United States Government? A. Yes, sir.

Q. And from time to time did you thereafter wear recording devices or order telephone conversations as an agent of the United States Government? A. Yes, sir.

Q. And one of the occasions upon which you recorded a telephone conversation as an agent for the government, pursuant to your agreement with Mr. Wilson on June 6th, was on August 13, 1974? A. Yes, sir.

\* \* \* \* \*

(488) Q. Mr. Pollak, again directing your attention to March 21, 1974, the first time you met Mr. Rapoport, am

*Allan Pollak—for Government—Cross*

I correct that as of that date you were in debt to the Manufacturers Hanover Trust Company in the amount of approximately \$142,000? A. I testified to this before, sir, I don't remember (489) how much it was at that time.

Q. Well, do you recall testifying last may at page 227:

*"By Mr. Fleming:*

*"Q. Am I correct between April 26, 1972, and March 27, 1974, about two years, you borrowed \$142,500 from Manufacturers Hanover Trust, Branch No. 15?"*

And you answered, "Yes"?

A. I don't remember the testimony, sir, but if it is on the page I will accept it, of course.

Q. Is it your best recollection that as of the time you first met Mr. Rapoport on March 21 you were already indebted to the Manufacturers Hanover Trust Company in the approximate amount of \$142,500? A. I know I owed them money, Mr. Fleming, but I don't know how much at that date.

Q. You pledged some securities? A. Yes.

Q. Am I correct, Mr. Pollak, that before you ever met Mr. Rapoport you discussed getting SBA financing with a man named Carey Bunin? A. Yes.

Q. And am I correct that before you ever met Mr. Rapoport you told Mr. Bunin that your bank in New York was Manufacturers Hanover Trust Company? (490) A. Yes, sir.

Q. And you agreed with Mr. Bunin that Manufacturers Hanover Trust Company would be a good bank for you to go to for your SBA loan because of your prior relationship with that bank? A. Yes, sir.

*Allan Pollak—for Government—Cross*

Q. That was before you ever met Mr. Rapoport? A. Yes, it was.

Q. Now I believe you also told Mr. Bunin that your father and your family company, which you described in your direct examination, had a relationship with Manufacturers Hanover Trust Company going back some 50 or 60 years? A. Yes, sir.

\* \* \* \* \*

(492) Q. And didn't Mr. Rapoport tell you that he was not certain that any bank would act as a loaning bank even though guaranteed by the SBA based upon the financials of the Entre Nous Corporation? A. It wasn't put that way, Mr. Fleming.

Q. Didn't Mr. Rapoport—yes or no—say to you that based upon the financial statements which he had seen of the Entre Nous he was not sure that a bank would loan money even with an SBA guarantee? A. Yes.

Q. And did you not respond to Mr. Rapoport, "Well, my family has had an account at the Manufacturers Hanover Trust Company for some 65 years and my wife and I personally have an account at the Manufacturers Hanover Trust and they are both the same branch, Branch 15"? A. Yes.

(493) Q. You did tell Mr. Rapoport that? A. Yes.

Q. And did not Mr. Rapoport then say to you, "Well, if that's the case go talk to them and see if they will lend you money with a guarantee"? A. I believe so, yes.

Q. And didn't he say, "if you have that kind of connection with that branch of the bank why don't you go talk to that branch"? A. I don't remember, Mr. Fleming.



*Allan Pollak—for Government—Cross*

Q. Well, do you recall testifying on page 253 on May 7, 1975:

*By me:*

"Q. Did he"—meaning Mr. Rapoport—"say that in essence, well, if you have that connection with that branch of that bank why don't you go talk to them?"

And your answer, "Yes, sir"?

A. Again, if it's on the transcript, sir, I said it.

Q. Is it the truth? A. Of course, Mr. Fleming.

Q. Mr. Rapoport did say, "If you have that connection why don't you go to that bank?"? A. Yes, sir.

Q. Did you mention Tom Hague's name to him? A. Yes.

(494) Q. Did you tell him that Mr. Hague was your loan officer at the Manufacturers Hanover Trust? A. Yes.

Q. And did Mr. Rapoport tell you, "Go speak to Mr. Hague and see if the bank would lend you money with a guarantee"? A. Yes, sir.

\* \* \* \* \*

(497) Q. When you spoke to Mr. Rapoport on March 21st you wanted \$350,000, didn't you? A. Yes, sir.

Q. And when you spoke to Mr. McCarthy subsequently, Mr. McCarthy cut it down to \$200,000, did he not? A. Yes, sir.

Q. And when the application went over to the SBA it was cut down to \$185,000 on the application? A. Yes, sir.

Q. Which you signed? A. Yes, sir.

Q. And then the SBA itself cut it down to \$150,000, did it not? A. Yes, sir.

*Allan Pollak—Government—Cross*

Q. And that happened at a conversation between you and Mr. Rubin of the SBA? A. No, not exactly, Mr. Fleming.

Q. Did you find out that the loan had been cut from 185 requested on the application to 150 when you met with Mr. Rubin at the SBA? (498) A. Yes, sir, I did.

Q. Was Mr. Rapoport present at that meeting? A. No, sir.

Q. Then, as a matter of fact, Mr. Rubin would not even allow you to take \$150,000 without any limitation, would he? A. He would not let me take the \$150,000 in the way, the loan was structured.

Q. Mr. Rubin of the SBA provided that you could receive only \$80,000 on disbursements, isn't that correct? A. Yes, sir.

Q. And that 70,000 of the \$150,000 would be kept in escrow? A. For machinery and equipment, yes.

Q. Kept under control for machinery and equipment only? A. Yes, sir.

\* \* \* \* \*

(499) Q. You got the \$80,000 towards the end of July, is that right? A. No, sir, we got it in August.

Q. You got it in August? A. Yes.

Q. And you had it spent by September, is that right? A. Near that, yes, sir.

Q. Did you ever spend any of the additional 70,000? A. Yes.

Q. How did you come to spend that? Did you spend all of the additional 70? A. No.

Q. It was not free for you to spend, was it? A. No.

Q. You had to get permission to spend some part of it, did you not? A. Yes.

*Allan Pollak—for Government—Cross*

Q. And you went to Manufacturers Hanover Trust Company and they refused you permission, did they not? A. Yes.

Q. And one of the reasons they refused you permission was because you had spent some of the \$80,000 to (500) pay people who had not been reflected in your application? A. I don't know.

Q. And when the Manufacturers Hanover Trust Company refused to allow you to invade the escrow fund you went to Assistant United States Attorney George Wilson, did you not? A. Yes.

Q. And you asked him to check it out, did you not? A. Yes.

Q. And he spoke to the SBA; did he tell you that? A. Yes.

Q. And then you went to speak to the SBA? A. Yes.

Q. You spoke to Mr. Dean? A. Yes, sir.

Q. And you pled your case to Mr. Dean? A. Yes.

Q. And Mr. Dean had Mr. Mauch of the SBA to talk to the bank? A. I don't know that either.

Q. Did Mr. Dean tell you he did that? A. I don't remember, sir.

Q. In any event, the bank changed its mind at the request of the SBA?

(501) Mr. Cutner: If he knows.

A. I don't know.

The Court: Is there any argument about what they did? Isn't this a big waste of time? Aren't

*Allan Pollak—for Government—Cross*

you prepared to concede they changed their mind at the request of somebody?

Mr. Cutner: He is asking what Mr. Pollak knows, your Honor.

The Court: Oh, he is trying to get at the underlying facts.

All right, frame the next question.

*By Mr. Fleming:*

Q. Did the bank change its mind? A. Yes.

Q. And was this after you had gone to the SBA? A. Yes.

Q. And after you had complained to Mr. Wilson? A. Yes.

Q. And then you got \$15,000 more? A. Yes.

Q. And the bank made you put up more of your father's securities? A. Yes.

Q. And then you testified in the grand jury, isn't (502) that right? A. Well, Mr. Fleming, I don't remember if it was before or after the testimony at the grand jury.

Q. Well, on August 13 you told Mr. Rapoport you received a grand jury subpoena, am I correct? A. Yes, sir.

Q. Did you appear before the grand jury pursuant to that subpoena? A. I got two subpoenas, Mr. Fleming, I am sorry, I don't remember which one I appeared for.

Q. Did you appear before the grand jury shortly after your conversation with Mr. Rapoport on August 13? A. I don't remember, sir. I am sure that the record will show when I appeared in the grand jury.



*Allan Pollak—for Government—Cross*

Q. Did you ever go in the grand jury and take the Fifth Amendment? A. Yes.

Q. And that was the first time in the grand jury? A. Yes.

Q. And was that after you had spoken to Mr. Rapoport on August 13? A. Yes.

Q. And was it after you took the Fifth Amendment in the grand jury that you asked for the additional \$15,000? (503) A. I don't remember that, Mr. Fleming. I don't remember whether the dates—what dates you are asking.

Mr. Fleming: May I have that marked, please.

(Defendant's Exhibit I marked for identification.)

Q. Mr. Pollak, I show you Defendant's Exhibit I for identification. Does that refresh your recollection as to the date upon which you appeared before the grand jury and did not take the Fifth Amendment? A. Yes, sir.

Q. And that is your second appearance before the grand jury, isn't that right? A. Yes.

Q. Am I correct that that was on November 1, 1974? A. Yes, sir.

Q. And am I correct that that was after you had asked Mr. Wilson and the SBA to intervene with the Manufacturers Hanover Trust Company to get you \$15,000 out of the escrow account? A. Yes, sir.

(504) Q. Did you testify in your direct examination, Mr.—do you have the entree into his loan application?

Mr. Cutner: Yes.

*Allan Pollak—for Government—Cross*

Q. I show you Government's Exhibit 1, Mr. Pollak. I direct your attention to paragraph 10 that's been called the compensation paragraph where the word "none" is inserted. Do you have that? A. Yes, sir.

Q. Did you testify on your direct examination that you had discussed that paragraph with Mr. Rapoport in April or early May of 1974? A. Yes, sir.

The Court: Just ask him if he discussed it in April or early May. Don't ask him the underlying facts. Just ask him: Did you discuss it then?

The Witness: Yes, sir.

Q. I show you your grand jury testimony, Exhibit I. Would you look at it and tell me, Mr. Pollak, if at any place in that grand jury testimony you ever say that you discussed paragraph 10 with Mr. Rapoport in April or May, 1974?

The Witness: I have to read this, your Honor. I haven't seen it in six months.

(505) The Court: Mr. Cutner, is it in there or isn't it? You are going to make this jury and court sit there while he reads this, are you?

Mr. Cutner: I understood Mr. Fleming was going to ask me in advance if he wants a concession on something. I just don't remember, Judge.

The Court: Take a look at it, please.

Mr. Cutner: I would be happy to. If I had an opportunity in advance to look it over—

The Court: Go ahead and read it, Mr. Pollak.

(Pause.)

*Allan Pollak—for Government—Cross*

The Court: Do you make a representation to the court it isn't in there, Mr. Fleming?

Mr. Fleming: Yes, sir.

The Court: I will take your representation. Let's go on with the trial.

. . . . .

(513) Q. Let me show you Exhibit 1 again, which is the loan application. That was signed by you on or about April 29, 1974? A. A little later, yes.

Q. And then submitted to the bank? A. I don't know where it was submitted, Mr. Fleming. It was sent back to Mr. Rapoport.

Q. Let me ask you: was it part of the materials submitted to the bank in support of the application for the loan? A. Yes, sir.

Q. And it been submitted to the bank before June 6, 1974, when you went into the United States Attorney's office? A. I don't know, Mr. Fleming. I guess so, yes.

Q. Do you remember telling Mr. George Wilson, assistant United States attorney, on June 6, 1974 that all the papers submitted in support of the loan were in accordance with the law? A. Yes.

Q. And this was one of those papers, isn't that right? (514) A. Yes, sir.

Q. And you went in to Mr. Wilson to cooperate with him? A. Yes.

Q. And June 6th was, according to your testimony, after Mr. Rapoport had told you that "none" was a false statement? A. Yes.

Q. And you told Mr. Wilson all the papers were submitted in accordance with law? A. Yes.

*Allan Pollak—for Government—Cross*

Q. You also told Mr. Wilson on June 6, 1974 that Mr. Rapoport really hadn't done very much, didn't you? A. Yes, sir.

Q. In fact, you said to Mr. Wilson you could have done the whole thing yourself? A. Yes, sir.

Q. And you complained to Mr. Wilson that you weren't getting any action? A. I did.

Q. And you complained to Mr. Wilson that you weren't getting your loan? A. I don't know that I said I wasn't getting (515) the loan. I said I wasn't getting action.

Q. The same thing? The action you were looking for was the loan, wasn't it? A. Yes, sir.

Q. And that's when you agreed to wear the tape recorder? A. Yes.

Q. And that's when Mr. Wilson told you you wouldn't be prosecuted? A. Yes, sir.

\* \* \* \* \*

(519) Q. Now, Mr. Pollak, in July did you receive a call from the bank—that is, Manufacturers Hanover Trust Company—telling you that the Manufacturers Hanover Trust Company was not going to disburse the loan? A. Yes.

Q. And did they tell you that they had received a grand jury subpoena in connection with the file on your loan? A. Yes.

Q. And did they give you that reason for the reason why they were not going to disburse the funds? (520) A. Yes.

Q. And did you call Mr. George Wilson, the assistant United States attorney? A. Yes, sir.

Q. And did you complain to him about the decision of the Manufacturers Hanover Trust Company? A. Yes.



*Allen Pollak—for Government—Recross*

Q. And did you ask the assistant United States attorney to call the Manufacturers Hanover Trust Company and see if he could get them to disburse the money? A. Yes, sir, I did.

Q. And did you thereafter receive the money? A. In part.

Q. You received \$80,000? A. Over a period of time, yes.

Q. That's all you were entitled to, wasn't it, \$80,000? A. No, sir.

Q. You received that? A. Yes.

\* \* \* \* \*

*(538) Recross Examination by Mr. Fleming:*

(538) Q. The grand jury testimony from which Mr. Cutner read was your second appearance on November 1st, (539) is that right? A. Yes, sir.

Q. The first time in you took the Fifth Amendment? A. Yes, sir.

Q. And then you got \$15,000 out of the escrow account—

Mr. Cutner: I object. It's been gone over.

The Court: The time frame in which it occurred may be made clear.

Q. You got \$15,000 out of the escrow account? A. Yes.

Q. And then you went before the grand jury on November 1st? A. Yes, sir.

\* \* \* \* \*

(583) The Court: Really, that's the key to the whole case, a vast amount of money for doing practically nothing. If it weren't for that the whole case should be thrown out.

*Colloquy*

(623) The Court: While we are on the subject, I am going to ask you to find me some kind of a case which allows you to prosecute somebody for perjury or for 162<sup>2</sup>, which is not really perjury, making a false statement under oath, for having been permitted to answer the question in the trial by nodding negatively, and the examiner doesn't pursue him and say, "Is your answer no?" or, "Would you please state your answer so the reporter can report it?" And I must say, never in my life have I heard that anybody was prosecuted because he failed to answer the question; the trial judge and the examining attorney both permitted him to fail to answer the question and allowed him to nod his head, and the court reporter interpreted whatever he did with his head as being nodding negatively. I don't know how you can put anybody in prison for doing it.

Mr. Cutner: If I may, that is not the only (624) specification in that count.

The Court: I know it is not, but I know it's one that is going out of that count.

As far as the prior question is concerned, well, it's arguable because of the alleged conversation with Seymour at the country club, and I can see that there may be a jury question in that part of it.

Mr. Fleming: Your Honor, with regard to that question, Mr. Cutner has already said in discussions on discovery that they do not allege—if I may have the count for just a moment—the question is:

*Colloquy*

"Isn't it a fact that Mr. Seymour who you say you know gave you \$30,000 cash on the American Medical Products Company SBA loan?"

"A. No, I don't think Mr. Seymour did.

"Q. He didn't? A. No, he did not."

Now, the government has told us that that is not alleged as a false statement.

Mr. Cutner: That is correct. The payments were turned over by Mr. Raymond on a couple of occasions.

The Court: What is the false statement? Nodding his head negatively?

Mr. Cutner: No, your Honor. That's one of them. (625) The first one is the initial question:

"Q. Mr. Rapoport, you testified when I was asking you about Mr. Agovino that the only time that you had ever received any cash in an envelope or any other way, I take it, was in the Agovino case. Was that true when you said it? A. Yes.

"Q. Is it true now? A. Yes."

It's the same thing, your Honor. He is denying the receipt of any cash.

The Court: That might be so. There is evidence here to believe or to suggest that Mr. Seymour gave him money in envelopes.

Mr. Fleming: May I speak to just that last point, your Honor?

The Court: Yes.

Mr. Fleming: And I have a further point on this count.

*Colloquy*

The Court: Yes?

Mr. Fleming: The government has also conceded that the question:

"Q. Mr. Rapoport, you testified when I was asking you about Mr. Agovino that the only time that you had ever (626) received any cash in an envelope or any other way, I take it, was in the Agovino case. Was that true when you said it?"

The government has conceded in informal discovery that that question was an improper question because Mr. Rapoport's testimony had been that receipt of cash from this Mr. Agovino, which was some time in 1968 or 1969, had been the first time and not the only time. It is the government's entire reliance on this count.

Mr. Cutner: I am not aware of any such concession.

Mr. Fleming: Mr. Wile told Mr. Lauer that.

The Court: You see, the proper question would have been:

"Q. Did you ever receive any cash in an envelope from anybody other than Mr. Agovino?"

But they frame the question so poorly here like asking, "You testified," and was it true when he said it. Now this is kind of ridiculous.

Mr. Fleming: And it did not, your Honor, accurately reflect that Mr. Rapoport had testified, and on that basis Mr. Wile told Mr. Lauer that the government was not contending that that question and answer is false.



*Colloquy*

The Court: What is it that is contended to be (627) false in this Count 8?

Mr. Fleming: We were told—

The Court: Please, let Mr. Cutner answer it himself.

Mr. Fleming: I am sorry, your Honor.

The Court: What does Mr. Cutner now at this point in time contend is false and perjurious in Count 8?

Mr. Cutner: The government's contention, your Honor, is that in the testimony set forth in Count 8, Mr. Rapoport denied receiving any cash at any time other than in the so-called Agovino case. That is the only time that he ever received any cash, and our contention is that that is not true. He received more than \$30,000 in the American Medical Products case.

The Court: But if you have specified in pretrial discussions that the question which begins: "Is it a fact that Mr. Seymour who you say you know"—a nice compound question there—is not false, and you conceded in your pretrial discussions, which Mr. Fleming says you did, and you are not in a position to affirm or deny that the prior question about his prior testimony, the one that begins, "Mr. Rapoport, you testified about Mr. Agovino," was an improper question, then what does that leave us in this count? That leaves us with a question which he answered (628) which he answered by nodding his head, and if you will show me a case in any district in this country which says that you can be prosecuted on

*Colloquy*

1623 in a trial for nodding your head, and both the attorney examining and the trial judge fail to tell the witness, "Please answer the question," I would like to see it and I will look at it with an open mind. I would be delighted to see such a case. Maybe you can find it in the Middle District of Louisiana.

Mr. Cutner: I just want to make clear, your Honor, that I am not at this time making the concession that Mr. Fleming has announced. I don't know that to be the fact.

The Court: No, but you would have time to verify it.

Mr. Cutner: Yes.

The Court: If Mr. Wile did so agree with counsel, I am sure you will back up Mr. Wile's agreement.

Mr. Cutner: I will back up Mr. Wile's agreement if that's the agreement.

\* \* \* \* \*

(629) The Court: I think how he was being paid would be material, although I regard materiality as a jury question, and I am relying on the new rules of evidence and their legislative history. I know some people in this district take the view that materiality is for the Court. I generally give an instruction in this regard, that if you believe the (630) testimony of the witness X, then it's material. That's in the grand jury inquiries, but I could see if money in that large amount is paid by an established business in the form of green cash currency, that's conducting affairs in a clandestine fashion, and it may have

*Colloquy*

some circumstantial relevance towards the issues which are before the Court. People don't ordinarily go out giving cash envelopes in legitimate business transactions, although they say here they filed a 1099.

• • • • •

(633) The Court: But that's a question for the jury.

I wouldn't think there was too much of a problem on the materiality. I think it would wind up being a question for the trier of the fact.

Under all the circumstances, when you use clandestine means, they are questions for the jury. And paying this kind of cash in envelopes at country clubs and in accountants' offices and the like smacks of clandestine means. If this were a legitimate consulting agreement they would have given a check.

Also, there is the vast amount of money for doing apparently nothing.

• • • • •

(661) Mr. Cutner: I asked Mr. Wile to come down so he could resolve the question on the perjury count, your Honor.

The Court: Should I excuse the jury?

How long is it going to take?

Mr. Cutner: I don't think it will take but a (662) moment.

I think there is no dispute at this point that the first—well, maybe I will let Mr. Wile state it.

Mr. Wile: My recollection of the conversation with Mr. Lauer is, I told him the first question would

*Colloquy*

not be relied on by the government because it was not an accurate statement of the question asked earlier by Kenney.

The Court: That is about what Mr. Fleming told me this morning.

Mr. Wile: But the second, "Is it true now," would be relied upon by the government since it was the government's claim that it was not true that the Agovino situation was the only time that cash had been received by Mr. Rapoport.

Mr. Fleming: And then the third question—

Mr. Wile: And also the "nodding negatively" would be relied upon by the government.

Mr. Fleming: As I understand it, only the first question and answer and the third question and answer and the fourth question and answer are not relied upon. It was just the second question and answer and the fifth question and answer.

The Court: I don't want to prolong the conversation, but as I understand it, the first question is not relied upon because it misstates his prior testimony, is (663) that correct?

Mr. Wile: Correct.

The Court: Now, the end of that question is, "was that true when you said it?"

Now, I have difficulty conceptually in relating the next question which says: "Is it true now?"

What is the "it"? What is the subject of the question, "Is it true now?"

You drafted this indictment?

Mr. Wile: Yes, I did, but not the question and answer.



*Colloquy*

"Is it true now that the only time you received cash was in the Agovino situation?"

The Court: All right, let's continue with the jury. I will discuss it with all of you later.

Thank you for stopping by.

\* \* \* \* \*

(707) The Court: Too bad they didn't indict the Manufacturers Hanover.

\* \* \* \* \*

(716) The Court: Where is the evidence that Mr. Rapoport was working on the form. I am not talking about working on expediting and getting whatever bureaucrat had to make the decision to give this money away to Goggi to make a prompt decision, which was (717) apparently what he was paid for.

Where have you tied him in with the wrongfulness of the form?

\* \* \* \* \*

(726) The Court: Here somebody is under a statutory duty to give truthful testimony while under oath and I regard testimony as meaning what we have a traditionally taken it to mean in the common law courts, that the witness answers his questions under oath.

I think that's the type of declaration the statute is directed towards. In the absence of some authority I believe that this last question has nothing to it.

I have to say also that first question, even as amplified by Mr. Wile yesterday, if you take the

*Colloquy*

second question in this count and take the "it," and take the word "it" therein, and refer it back to the immediately prior question, you would have to determine what "it" is, what question is being asked and it looks to me as if it is the same question.

Mr. Cutner: Your Honor, I think it's open for Mr. Rapoport to explain, if he chooses to, what he understood, but I submit it is perfectly clear that he was being asked, "Was this the only time you ever received cash in an envelope or any other way?"

I think that is perfectly clear. And I (727) think it is also clear in the succeeding questions that he is being asked about the American Medical Products transaction, and whether he received any money.

I think it's just perfectly obvious that he is denying that he received any money in this transaction.

The Court: It would have been so simple to have examined this witness properly: Did you ever receive an envelope with cash therein?

Mr. Cutner: I agree.

The Court: And he had to put in on the end of it on that loan which permitted the witness to quibble with himself and say, "Well, I received cash, but I was a consultant."

I really don't see any purpose in pursuing it any more. I find that as to count 8 it is not a crime in violation of 163 for a witness on the stand in this court to nod his head in a fashion which the court reporter interprets as being negatively. That doesn't constitute a false declaration under oath or testi-

*Jerome Rapoport—Defendant—Direct*

mony, or an answer, and I further find that the second question which is claimed to have been falsely answered in that count is so confusing and incomplete (728) and unclear that even as amplified in our side-bar conversation with the person who drafted the indictment that no reasonable juror acting reasonably could convict a man on that part.

The rest of the counts are conceded to be—I beg your pardon—the rest of the questions and answers, however, are conceded to be either truthfully answered or not the basis for wrongdoing under that famous Bronson case.

I don't mean to be disrespectful. I am just trying to get the point across in a hurry. Under the Bronson case some of these answers apparently are all right, because instead of charging the witness with lying they charge the examiner with stupidity.

Anything else, Mr. Fleming?

Mr. Fleming: Count 8 is then dismissed?

The Court: Yes, I will grant a judgment of acquittal on count 8.

.   .   .   .   .

(739) JEROME RAPOPORT, the defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

(739) *Direct Examination by Mr. Fleming:*

.   .   .   .   .

(745) Q. I want to show you Government's Exhibit 1, which is the Form 4 for a loan, SBA—guaranteed (746)

*Jerome Rapoport—Defendant—Direct*

loan, by Entre Nous Graphics, Inc. I am not going to ask you about that application specifically at this time, Mr. Rapoport, I want to ask you some general questions about that form.

Now, during your employment with the Small Business Administration did you become familiar with those types of forms? A. Yes, I did, sir.

Q. Are they called Form 4s colloquially? A. Yes, sir.

Q. That's the form that is filled out, the basic form filled out, in connection with an application for an SBA loan? A. That is correct.

Q. There has been testimony about paragraph 10, the compensation paragraph. Would you turn to that.

While at the SBA did you become familiar with paragraph 10? A. Yes.

Q. And the rules and regulations having to do with the disclosure of compensation? A. Yes, sir, I did.

Q. Based upon your experience at the SBA, (7) what disclosure did you understand to be required under paragraph 10 of those Forms 4s? A. My understanding is that if you got paid a fee you put your name down on your application, if you assisted the loan applicant.

Q. If you get paid a fee for what? A. For assisting in the preparation of the application.

Q. If you gave assistance but were not paid for that assistance? A. Your name was not required.

Q. Was that your understanding? A. Yes.

Q. Is that your present understanding? A. Absolutely.

Q. Count 1 of the indictment has to do with the Entre Nous application, and you saw Mr. Pollak testify here? A. Yes, sir.



*Jerome Rapoport—Defendant—Direct*

Q. Did you meet Mr. Pollak on or about March 21st, as he testified? A. Yes, sir, I did.

Q. Do you remember meeting him in 1974? A. Yes, sir, I do.

(748) Q. Does the date March 21st—is that an acceptable one to you? A. Yes, it is.

Q. Do you recall how you came to meet him, who set up the meeting? A. Yes, I do, sir.

Q. Who was that? A. Mr. Carey Bunin.

Q. Was he a friend of yours, Carey Bunin? A. Yes, sir.

Q. Where did that meeting take place, to your recollection? A. At my apartment, 470 Park Avenue.

Q. Do you recall what time Mr. Pollak came up to your apartment? A. It was approximately 7:30.

Q. Besides yourself, who came? You were there? A. Yes. Allan Pollak, Gail Jowers and Carey Bunin.

Q. Did Mr. Pollak discuss with you his company, Entre Nous Graphics? A. Yes, he did, sir.

Q. Did he seek your advice with regard to obtaining (749) financing for his company? A. Yes he did, sir.

Q. How long did that conversation last, to the best of your recollection? A. I would say around two and a half hours.

Q. Two and a half hours? A. Yes, sir.

Mr. Fleming: Your Honor, maybe it's the room, but could you inquire if the jurors can hear the witness.

The Court: That's my standing instruction. If any of you can't hear raise your hands and say so.

*Jerome Rapoport—Defendant—Direct*

Q. You say it lasted about two and a half hours? A. Yes, sir.

Q. Were various means of financing for Entre Nous discussed? A. Yes, they were.

Q. As best you can recall, would you testify to your recollection what means of financing were discussed, the order in which they were discussed and in that connection who said what? Do you understand? A. Yes, sir.

Q. All right. (750) A. Mr. Pollak said to me that he had a loan with Manufacturers Hanover Trust Company for \$142,000 which was secured by approximately \$200,000 worth of listed securities, securities traded on the New York Stock Exchange, and that he was looking to borrow more money on those securities, and would I be able to help him in getting more funds.

Do you want me to tell you what I said?

Q. Did he ask you if more money could be borrowed at Manufacturers Hanover Trust on that stock? A. Yes, he did.

Q. What did you tell him? A. I told him that according to the Federal Board regulation, that you can't hypothecate stock for more than 70 per cent of its loan value at that time. The percentage fluctuates but I believe it was 70 per cent at that time and it was my understanding he had that stock fully margined.

He then asked me did I have any financial institutions or factors, I think factors, who would be willing to hypothecate the stock and he would be willing to pay a high rate of interest for such a loan.

I told him that the same rule applied to factors. It didn't before but it does apply to factors (751) at this time.

*Jerome Rapoport—Defendant—Direct*

He asked me then whether I had any clients who would be willing to lend on these securities, and I told him my clients would have to take a second position and there would be no way to secure their interest.

Then I think—then I asked him, “How about a private placement?”

Q. What do you mean by that? Or what did you mean? Private placement, what did that mean? A. A private placement means that where a company wishes to borrow money—or let me strike that. Where a company wants to get money there are several methods. One method is a private placement. A private placement is used where a company sells its stock to a limited group of investors. These investors pay the money for the stock that goes into the corporation. This money is not a loan, it doesn't have to be paid back, and it goes into the corporation as equity.

The investors tend to gain from the appreciation in the stock.

Q. So you asked him if he would consider a private placement of some of his stock? (752) A. That was correct.

Q. What was his response to that? A. He wanted to know how long it would take.

Q. Yes. A. And I told him it would take between 6 and eight months.

Q. Did he say anything? A. Then Mr. Bunin said—

Q. Did Pollak say anything about six to eight months? A. Yes. Mr. Pollak said six to eight months is too long. And Mr. Bunin said, “How about gap financing?”

Q. What did that mean to you? A. Well, gap financing is the interim money which is obtained prior to the private placement, and it is—

*Jerome Rapoport—Defendant—Direct*

Q. To fill the gap? A. Yes, to fill the gap, and it is taken out by the private placement.

Q. I see. What did you say to Bunin about the gap financing? A. I told him that I had no clients who would be interested in gap financing, and I asked Pollak (753) whether he would have some friends or relatives who would give him this gap financing. He said that he had been to see his friends and relatives and that this was not available.

Q. Was the SBA then mentioned? A. Pardon me?

Q. Was the Small Business Administration then mentioned? A. Yes.

Q. Who mentioned it? A. Allan Pollak.

Q. Tell me what was said. A. Allan Pollak said, "Well, do I qualify for an SBA loan?"

And I said, "Well, how much money are you looking for?"

And he said, "\$350,000."

I said, "Well, the SBA cannot lend more than \$100,000 directly. However, a bank can lend \$350,000 and they can get up to a 90 per cent guarantee from the federal government on its loan."

So he said to me, "Well, do you think it's possible to get a guaranteed loan, an SBA guaranteed loan?"

(754) And I said, "Let me see your financial statements."

And he said, "Didn't Carey Bunin give them to you?"

And I said, "Yes, he did, but I have thrown them away. Do you have another set?"

Q. Had Bunin earlier sent you a set of the financials? A. Yes.



*Jerome Rapoport—Defendant—Direct*

Q. And you had looked at them? A. Yes.

Q. And thrown them away? A. Yes.

Q. So you told Pollak that and asked him if he had another set. A. That's correct.

Q. What happened then? A. He took out another set, and I studied it, and I studied it, and I didn't—I took a look at them and I said, "I don't think any institution I know would be interested in doing an SBA-guaranteed loan based on these financials."

Q. Did he say anything in response to that? Did Pollak say anything in response to that? (755) A. Yes, he did. He said that he had an account with Manufacturers, and did Manufacturers do SBA loans. I said, "They do."

He said that he had an account relationship, he and his family an account relationship with Manufacturers Hanover for some 65 years, that he was a multimillionaire—that his father was, not Allan—and that he borrowed personally, and he felt that he would have some clout at that Manufacturers Hanover Trust Company.

Q. Did he mention the branch? A. Yes, he did.

Q. What was it? A. Well, he asked me whether I knew a Tom Hague, who was his branch man, which I later found out to be I think Branch 15 of the Manufacturers Hanover Trust Company, and I said no, I didn't.

Q. So after Mr. Pollak told you about the connection that he and his family had with Manufacturers Hanover Trust did you say anything to him about that? A. Yes. I said to him that "If you have such good connections at Manufacturers Hanover Trust Company why don't you go down there and get yourself the loan?"

*Jerome Rapoport—Defendant—Direct*

(756) Q. What did he say, if anything? A. He then said to me, "Will you help me get an SBA loan?"

And I said to him, "I will not. SBA—getting people SBA loans is not my business. I am not a finder."

I told him that. If he wants a loan, and if he wants to retain me as a consultant, I will be glad to provide those services for him. However, my fees are expensive. And then—

Q. What did he say? A. He said to me, "How much do you charge?"

And I said, "If you get the loan, and you retain me as a consultant, my fees as a rule of thumb are up to 10 per cent of the loan."

Q. Did you tell him that your retainer as a financial consultant for a fee would not begin unless he got a loan?

A. That is correct.

Then he said to me, "If I retain you as a consultant, can I ask you questions relative to SBA?"

And I said, "Yes. However, I don't want to get paid for any advice I give you on an SBA loan, nor will I accept any fee on an SBA loan."

(757) I said, "If you get the loan and I am retained as a consultant I will provide services to you. If you don't get the loan, you don't need me as a consultant and you don't pay me any money."

Q. Did you tell him that fee he would pay you would then be for services you would perform after the financing?

A. Yes, I did, sir.

Q. What did Pollak say? A. Pollak said that he liked my style, and that what's his next step. I said, "Your

*Jerome Rapoport—Defendant—Direct*

next step is, go down to your branch office and get yourself an SBA loan."

Q. All right.

. . . . .

(761) Q. Did you in April or May or June of 1974, or July, for that matter, or at any time—I am directing your attention to the disclosure, paragraph 10, of the Entre Nous application—did you ever tell Mr. Pollak, with regard to that paragraph 10, that he should (762) not put your name in there because that would kill the loan? A. I never said that to him.

Q. Did you ever tell him anything with regard to paragraph 10? A. I never said anything with regard to paragraph 10.

Q. What, if anything, did you do—I will withdraw that.

Did you do things which could be characterized as of assistance in connection with the Entre Nous application? A. Yes.

Q. All right. Now, you tell me what you remember you did do which you believe could be characterized as of assistance in connection with the application. A. Well, I had my secretary type up some forms for Mr. Pollak.

Q. Was that upon information provided by Pollak? A. Yes. I met with Mr. Pollak several occasions. I had lunch with Mr. Pollak in the bank, with an officer of the bank. I had—I received a lot of phone calls from Mr. Pollak.

(763) Q. You went to the closing? A. I went to the closing.

Q. And you prepared him for the closing? A. Yes. I had what I call a pre-closing procedure. And I spoke to

*Jerome Rapoport—Defendant—Direct*

at least one of Mr. Pollak's creditors, an attorney. I spoke to him. Oh, yes, I think I also—he had his cousin, I think, call me to ask me, you know, about Mr. Pollak something; I forget what about, but I think his cousin called me.

Q. For any of those things which you stated, did you receive any payment? A. None whatsoever.

Q. Did you have an agreement that you would receive payment, that you would receive payment, that you would receive payment for any of those things? A. I never had that agreement.

Q. Now, you had agreed, according to your testimony, that there would come a time when you would receive a fee, is that correct? A. That's correct.

Q. And when were you, according to your agreement, to receive that fee? A. When Mr. Pollak got financing I would become (764) a consultant and at that time my fee would become due.

Q. And that fee would be for future services? A. That's correct.

Q. Is that your good-faith recollection of your agreement? A. Absolutely.

\* \* \* \* \*

(766) Q. Now, Electrical Precision Company, if that's the correct name, I believe that is counts 2 and 3—let me ask you: On count 1, the Entre Nous, which covers the Entre Nous application, it says at the end, "Whereas in truth and in fact, as Jerome Rapoport, then and there well knew, he," meaning Rapoport, "had been engaged to obtain the loan for a fee of 10 per cent of the loan proceeds contingent upon the receipt by Entre Nous Graphics"?



*Jerome Rapoport—Defendant—Direct*

The Court: This is count 1 you are reading from?

Mr. Fleming: Yes, your Honor. The allegation is to what Mr. Rapoport knew.

Q. Then and there well knew he had been engaged to obtain a loan for a fee. On your oath, Mr. Rapoport, had you agreed with Mr. Pollak that you would obtain the loan for Entre Nous? A. Absolutely not.

Q. Did you obtain the loan for Entre Nous? A. I did not.

Q. Now, Electrical Precision. Government's Exhibit 2 is an application for a loan, again on a Form 4, Electrical Precision Meter Corporation, and it is signed Gerald Stolar and dated March 14, 1973.

\* \* \* \* \*

(770) Q. Had you formed an opinion as to whether Electrical Precision might qualify for SBA financing? A. Yes, I did.

Q. Did you express that to Mr. Stolar, and if you did, what did you tell him? A. I told Mr. Stolar that an analysis of his financial statements leads me to believe that he is eligible for financial assistance with the SBA.

Q. Did you tell him why? A. Yes, I did.

Q. Did you give him the reasons? A. Yes, I did, sir.

Q. What did you tell him? A. I told him that I had noticed on his balance sheet that his tools and dies were fully depreciated, and that my analysis of its tools and dies, that if he were to sell them at market value, they would be substantially higher.

*Jerome Rapoport—Defendant—Direct*

Q. Than the balance sheet figure? A. Than the balance sheet had indicated; and I told him that was certainly substantial collateral for him to get (771) a loan.

Q. Now, did Stolar ask for your help on an SBA loan? A. Yes.

Q. What did he say? A. Stolar said to me, would I help him get an SBA loan.

Q. What did you say to Stolar? A. I told him—I said the same thing I said to Pollak. I said, “No, I am not in the business of getting people SBA loans; I am not a finder. If you get a loan and you want to hire me as a consultant I am available to provide those services for you.”

I told him that my fees are expensive.

Q. Did he ask you if he could ask you questions about the loan if he hired you as a consultant? A. Yes, he did.

Q. What did you say? A. I said absolutely. I told him that if he hired me as a consultant I would gladly give him advice on SBA matters. However, I told him that, “You can’t pay me on anything I tell you about SBA, nor will I accept a fee on anything relative to SBA.”

Q. What did Stolar say? Did he agree? (772) A. Yes, he did.

Q. And, in fact, was a consulting agreement executed between you and the company? A. That is correct.

Q. Which I think the government placed in evidence. A. Yes.

Q. And that is dated well before the loan application; it is dated before the loan application? A. Yes, sir.

*Jerome Rapoport—Defendant—Direct*

Q. Now, that loan was disbursed by First National City Bank, now Citibank? A. Correct.

Q. Did you find First National City Bank for Electrical Precision? A. I did not.

Q. In fact, First National City Bank was their bank already, is that correct? A. That is correct.

Q. They went to their own bank? A. That's correct.

Q. Did you go down to First National City Bank and promote the loan with First National City Bank? A. No, I didn't.

Q. Did you speak to anyone at the Small Business(773) Administration about it? A. No, I didn't.

\* \* \* \* \*

Q. Did you tell Mr. Stolar, "Don't put my name in (774) because it will kill the loan"? A. I never did.

Q. Did you tell Mr. Wapnick that? A. I never did.

Q. Can you think of anything else aside from reviewing financials, anything specific that you advised him on or assisted him on in connection with that loan application? A. I think I went to the closing, that's about all.

Q. Now, again, Counts 2 and 3, which deal with the Electrical Precision Meter Corporation application, allege that in truth and in fact, as Jerome Rapoport, the defendant, then and there well knew, he—meaning Rapoport—had been engaged to obtain a loan for Electrical Precision for a fee contingent upon the receipt of the proceeds of the loan by Electrical Precision Meter Corp.

Did you agree with anyone at Electrical Precision to obtain a loan for them? A. No, I did not.

*Jerome Rapoport—Defendant—Direct*

Q. Did you agree with anyone at Electrical Precision to be paid any money for anything you did in connection with the loan? A. I did not.

Q. Did you obtain the loan? (775) A. No, I didn't.

Q. You didn't even find the bank? A. I didn't find the bank, no.

Q. All right, skipping Counts 4 and 5 which had to do with Goggi International and going to Counts 6 and 7 which have to do with Smugglers Attie, Incorporated:

Counts 6 and 7 with regard to Smugglers Attie both contain the same language:

Whereas, in truth and in fact, as Jerome Rapoport, the defendant, then and there well knew, he—being Rapoport—had been engaged to obtain the loan—that is for Smugglers Attie—for a fee of 10 per cent of the loan proceeds contingent upon the receipt by Smugglers Attie, Incorporated.

Now, did you agree to obtain a loan for Smugglers Attie? A. Never.

Q. Did you agree to take a fee from Smugglers Attie for obtaining or helping them obtain a loan? A. I did not.

Q. Did you obtain a loan for them? A. I did not.

Mr. Fleming: May we see that application, please?

(776) (Application handed to Mr. Fleming.)

Mr. Fleming: (To the jury) Now, this, again, to try to fix a date, is Government's Exhibit 4; it's the loan application of Smugglers Attie, and I believe there is testimony that it was signed by Mr. Sol Inspector, President, March 19, 1973.

\* \* \* \* \*



*Jerome Rapoport—Defendant—Direct*

(777) Q. Did you meet with Gazziano and Blonder? A. Yes, I did.

Q. And can you recall where? A. I forget the name of the place; it was a cafeteria near the bank; I forget the name.

Q. Do you recall the substance of that conversation? A. Yes. We discussed financing for the company, what business the company was in, where the banking relations (778) were, what they were doing, what their projections are, what their current status is, and they eventually came down and asked me, was the company eligible for an SBA loan, in my opinion. And I told them it was.

Q. Did you have any later, subsequent meeting with Blonder at which you met Inspector and his partner, the other principal? A. Yes, I did.

Q. Keep your voice up. A. Yes. I did meet the principal of Smugglers Attic.

Q. Where did that meeting take place? A. At Mr. Blonder's office.

Q. Who was present at that meeting? A. Mr. Blonder, Mr. Rosenbaum, Mr. Inspector and myself.

Q. Was there a conversation about an SBA loan application? A. Yes, there was.

Q. Did anyone ask you if you could help them on a loan application? A. Yes, sir, there was.

Q. Who was it? A. I think it was one of the principals—I think (779) it was Rosenbaum—maybe it was Inspector; it could have been Inspector.

Q. Did you tell them what you had told Pollak and Stolar essentially? A. Yes, absolutely.

*Jerome Rapoport—Defendant—Direct*

Q. Did they agree to retain you as a consultant to take out a loan? A. Yes, they did, sir.

Q. Did they agree to pay you a fee as a consultant of 10 per cent or up to 10 per cent of the amount of any financing they got? A. Yes, they did, sir.

Q. Now, the Bank Leumi disbursed that loan.

Did you introduce Smugglers Attie to the Bank Leumi? A. No, I did not.

Q. Did you promote the loan with Bank Leumi? A. No, I did not.

Q. Did you speak to anyone at the SBA about the loan? A. No, I did not.

Q. Did you prepare the financial statements submitted in support of the loan? A. No, I did not.

(780) Q. Did you prepare the Form 4 application? A. No, I did not.

Q. Can you recall anything that you did in connection with that loan prior to its disbursement? A. I may have answered some questions from Mr. Blonder and I went to the closing; that's about all.

\* \* \* \* \*

(782) Q. Now, you testified as a witness in your own defense at a trial in October, 1975? A. Yes, sir.

Q. Which had to do with Entre Nous Corporation? A. Yes.

Q. Which presently is Count 9 in this indictment?

\* \* \* \* \*

*Jerome Rapoport—Defendant—Direct*

(785) Q. Did you have a consulting agreement with American Medical Products Corporation? A. Yes, I did, sir.

(786) Q. And at the time you were asked these questions in October were you still holding yourself out to them as a consultant? A. Yes, I was. Yes, sir.

\* \* \* \* \*

(788) Q. Were you asked if you could help obtain SBA financing for American Medical Products? A. Yes.

Q. Do you recall who asked you? A. Joe Raymond.

Q. Mr. Raymond? A. Yes.

Q. What was your answer? A. No.

Q. Your answer was essentially what you had said to Pollak and the others? A. That's correct.

Q. Did you offer to become a financial consultant (789) to the company if they received financing? A. Yes, sir, I did.

Q. And did you tell Mr. Raymond that your fee ran up to 10 per cent of whatever financing they would receive, if they received it? A. Yes, sir, I did.

Q. Did he agree to that? A. Plus 10 per cent of the stock, plus he agreed to pay me 10 per cent of the stock in his company.

Q. Did you find a disbursing bank for American Medical Products? A. No, sir.

Q. Did you talk to anyone at the SBA about that loan application? A. No, sir.

Q. I think there was Manufacturers Hanover Trust that granted that loan? A. Yes, sir.

*Herbert Joseph Rubin—for Defendants—Direct*

Q. Did you talk to anyone at the bank about it, to your recollection? A. I had a lunch that I met—I was invited to a lunch and I met Mr. Jenkins there from the bank.

Q. Did you promote the loan with Mr. Jenkins? A. No.

(790) Q. Did you prepare the financial statements for the loan? A. I did not.

Q. Did you prepare the Form 4 application? A. I did not.

Q. Can you recall anything you did in connection with that loan? A. Nothing at all.

. . . . .

(800) Q. Mr. Rapoport, you testified that you received some cash from Mr. Seymour, is that correct? A. Yes.

Q. Now, on the trial in October were you asked this question:

“Q. On several occasions he”—meaning Mr. Seymour—“gave you envelopes with cash in them on that loan”—referring to the American Medical Products loan.

Do you recall being asked that question? A. Yes.

Q. Did you consider the cash that you received from Mr. Seymour as on that loan? A. No.

. . . . .

(940) HERBERT JOSEPH RUBIN, called as a witness by defendant, being first duly sworn, testified as follows:

*Direct Examination by Mr. Fleming:*

Q. Mr. Rubin, you are a loan officer for the Small Business Administration? A. Yes, sir.



*Herbert Joseph Rubin—for Defendants—Direct*

Q. And employed here in the New York region? A. Yes, sir.

Q. Right across the street? A. Correct.

(941) Q. How long have you been so employed? A. Approximately 10½ years.

Q. Do you know Jerry Rapoport? A. I know him from an acquaintanceship with prior employment when he was with the Small Business Administration.

Q. When he was working there for those two years? A. Yes, sir.

Q. And is the Mr. Rapoport that you know? A. Yes, sir.

Q. Mr. Rubin, do you recall of your own recollection whether you were the loan officer on an SBA-guaranteed loan application by a company called Entre Nous Graphics, Inc.? A. Yes, I was.

Q. Do you remember that the principal of that company was Allan Pollak? A. Yes.

Q. Did Mr. Rapoport ever speak to you about that application? A. No.

Q. Did he ever pay you any money in order to obtain your approval of that application? (942) A. No.

Q. Did he ever give you anything of value in order to get you to approve the application? A. No.

Q. Do you recall an application for an SBA-guaranteed loan by Smugglers Attie, Inc.? A. Yes, I do.

Q. Were you the loan officer on that one too, if you recall? A. Yes, I was.

Q. I ask you the same questions: did Mr. Rapoport ever speak to you about that application? A. No.

*Francis Delepine—for Defendant—Direct*

Q. Did he ever pay you any money or anything of—  
well, any money to get you to approve the application? A.  
No.

Q. Did he ever give you anything of value to get you to  
approve the application? A. No, nothing.

\* \* \* \* \*

(943) FRANCIS DELEPINE, called as a witness by defen-  
dant, being first duly sworn, testified as follows:

*Direct Examination by Mr. Fleming:*

Q. Mr. Delepine, I put in front of your Government's  
(944) Exhibit 1, application for an SBA-guaranteed loan  
by Entre Nous Graphics, Inc.

Where are you presently employed? A. Manufacturers  
Hanover Trust Company.

Q. And in 1974 were you employed at Manufactures Han-  
over Trust? A. Yes, I was.

Q. In what capacity? A. Lending information.

Q. During that year did you meet an Allan Pollak in con-  
nection with this Entre Nous application? A. Yes, I do.

Q. Am I correct that you first heard of the Entre Nous  
application from a man named Tom Hague? A. That is  
correct.

Q. Who is Tom Hague? A. Tom Hague is a vice presi-  
dent of the Manufacturers Hanover Trust Company.

Q. Where does he work or did he work at that time?  
A. He works at Branch 15.

Q. Did Mr. Hague tell you that Mr. Pollak's father had  
had a long relationship with Manufacturers Hanover Trust  
Company? (945) A. Yes, he did.

*Francis Delepine—for Defendant—Direct*

Q. Did he tell you that Allan Pollak himself had a long banking relationship with Manufacturers Hanover Trust?

A. Yes, he did.

Q. Did there come a time when you met Allan Pollak?

A. Yes.

Q. Who introduced him to you? A. I met Allan Pollak up in the office, I believe.

Q. Did Mr. Hague bring him in the office? A. Mr. Hague brought Mr. Pollak—

Mr. Cutner: I object to leading, your Honor.

The Court: It's leading.

Q. What's your best recollection of who introduced you to Mr. Pollak? A. Mr. Pollak came up to the office with Tom Hague to—

Q. Was that the first time you met him? A. I did not meet Mr. Pollak on that particular day.

Q. I see. (946) A. It was subsequently that I met Mr. Pollak.

Q. That was when you first heard of Mr. Pollak? A. Well, yes. Subsequently, after he came in, I found out that his name was Allan Pollak.

Q. Do you know Mr. Rapoport? A. Yes, I do.

Q. Is this the Mr. Jerry Rapoport that you know? A. Yes.

Q. Did Mr. Rapoport ever speak to you about the Entre Nous application? A. In passing.

Q. Well, first of all, did he ever speak to you about it? Yes or no. A. Yes.

Q. Did he ever come to your office for the sole purpose of speaking to you about the Entre Nous application? A. No.

*Francis Delepine—for Defendant—Direct*

Q. Did the Entre Nous application come up in the course of conversations with you about other matters? A. Yes.

Q. Did Mr. Rapoport recommend—I will withdraw that.

(947) Did Mr. Rapoport promote the Entre Nous application?

Mr. Cutner: Objection.

The Court: You ought to let counsel finish the question, but I think it is objectionable as to form: did he promote.

Mr. Fleming: Because of "promote," your Honor?

The Court: Yes. What if anything did he say to you about the Entre Nous loan?

Q. What if anything did Mr. Rapoport say to you about the Entre Nous application? A. He felt it was weak.

The Court: He told you that?

The Witness: Yes, he did.

\* \* \* \* \*

(948) Q. I apologize, Mr. Delepine. I neglected (949) to ask you a couple of questions.

Did Mr. Rapoport ever pay you any money to get you to approve the Entre Nous application? A. No, sir.

Q. Did he ever give you anything of value to do that? A. No, sir.

(950) Mr. Fleming: This testimony I believe was given on October 27, 1975.



*Thomas Hague—for Defendant—Direct*

"Thomas Hague, called as a witness by the defendant, having first been duly sworn, testified as follows:

*"Direct Examination by Mr. Fleming:*

"Q. Mr. Hague, my name is Peter Fleming, together with Elliot Lauer we represent Mr. Rapoport. You have met Mr. Rapoport? A. Yes, I have.

"Q. My question is, do you know a man named Allan Pollak? A. Yes, I do.

"Q. Are you presently employed by the Manufacturers Hanover Trust Company? A. I am.

"Q. Are you still at Branch 15? A. I am.

(951) "Q. Still a vice president? A. Assistant vice president.

"Q. You were at the same branch in that capacity for how long? A. Thirteen years.

"Q. Do you know Allan Pollak? A. Yes, I do.

"Q. Sir, have you served as—has Manufacturers Hanover Trust Company served as banker for Allan Pollak and for his father? A. We have.

"Q. Am I correct that the relationship with the Pollak family goes back some 50 or 60 years? A. That is correct.

"Q. Am I correct that Allan Pollak himself, during a period of time up to March of 1974, borrowed up to \$142,500 from your branch? A. That is right.

"Q. And secured that with securities owned by his father, which is father had given to him or to the bank for that purpose? A. Hypothecated to the bank, yes.

*Thomas Hague—for Defendant—Direct*

"Q. So that in or about March of 1974, Allan Pollak owed Branch 15, your bank, \$142,500? (952)

A. That is right.

"Q. You know that Allan Pollak subsequently applied for an SBA-guaranteed loan from Manufacturers Hanover Trust Company, is that right? A. Yes. It was originally negotiated with me.

"Q. It was negotiated with you? A. Yes.

"Q. Isn't it correct that Allan Pollak walked in to you all alone, discussed with you that possibility?

A. The initial meeting with him was alone, yes.

"Q. And at that time you had never heard of Jerry Rapoport, had you? A. No.

"Q. That was in or about March of 1974, was it not, when Allan Pollak walked in all alone? A. I believe that was about the date, yes, early '74.

"Q. Did you not on Mr. Pollak's behalf introduce him by telephone to Mr. Gus McCarthy? A. I did.

"Q. And then that was one meeting, isn't that (953) right, Mr. Hague? That was the first meeting?

A. That's right.

"Q. Then there was a second meeting where Pollak came to see you and you and Pollak went up and spoke to Mr. McCarthy? A. Yes, correct.

"Q. You still had never met Jerry Rapoport? A. No.

"Q. Or heard of him? A. No.

"Q. Then there was a third meeting in May when Mr. Pollak came down with a completed loan application and with Mr. Rapoport? A. That is right.

*Thomas Hague—for Defendant—Direct*

"Q. That's when you met Mr. Rapoport, May 14, 1974? A. I don't really remember the date.

"Q. Do you remember dictating a short memorandum recommending Mr. Pollak to Mr. McCarthy?

A. Yes, that is right.

"Q. That was done on that occasion, wasn't it?

A. I am sure it was done the same day because there was quite a rush on.

"Q. So that will fix the date? (954) A. Right. Okay.

"Q. I will ask you if this is it. A. This is it, sir.

"Q. That's May 14th. A. Okay.

"Q. Your first meeting with Pollak on the SBA loan, he comes in alone, and you introduce him to McCarthy by telephone, right? A. Yes.

"Q. The second meeting he comes in alone and you go up and you go with him to see McCarthy? A. Right.

"Q. The third meeting he comes in with the completed application with Mr. Rapoport?"

There is an objection to that which is sustained.

"Q. The third meeting, May 14th, Mr. Pollak comes in with the completed loan application and Mr. Rapoport, you look at it, dictate that memo, and then go up to see Mr. McCarthy, or you sent them to see Mr. McCarthy? A. That's right."

\* \* \* \* \*

*August McCarthy—for Defendant—Direct*

(955) AUGUST MCCARTHY, called as a witness by defendant, being first duly sworn, testified as follows:

*Direct Examination by Mr. Fleming:*

Q. Mr. McCarthy, are you presently employed (956) by the Manufacturers Hanover Trust Company? A. I am.

Q. Directing your attention to March of 1974, were you employed by the bank at that time? A. I was.

Q. Can you tell me where and in what capacity at the bank? A. I was vice president in the urban finance division of the bank's department of public responsibility. My duties were to supervise the making of SBA-guaranteed loans in the bank.

Q. Did there come a time in 1974 when you met a man named Allan Pollak? A. Yes, there did.

Q. Was Allan Pollak seeking an SBA-guaranteed loan? A. Yes, he was.

Q. Did there come a time when you spoke to Mr.—I am sorry; do you know Jerome Rapoport? A. Yes, I do.

Q. And you see him here? A. Yes, I do. He is sitting at the table.

Q. All right.

Did there come a time when you spoke to (957) Mr. Rapoport about Mr. Pollak? A. Yes, there did.

(958) Q. I will ask you this question, Mr. McCarthy:

Did you meet Allan Pollak for the first time before you ever spoke to Mr. Rapoport about Mr. Pollak? A. Yes, I did.

Q. How did you come to meet Mr. Pollak? A. Mr. Pollak was introduced to me by Thomas Hague, an officer at one



*August McCarthy—for Defendant—Direct*

of our midtown Manhattan branches, first by phone, Mr. Hague called me on the phone and said that he had a potential SBA borrower that he would like to bring to my attention, and that the borrower, the potential borrower was the son of an account at Mr. Hague's branch, and he asked that I meet with Allan Pollak, and I agreed to.

Q. Now, did Mr. Rapoport ever speak to you about the Entre Nous application? A. On several occasions, yes.

Q. Can you recall what, in substance, he said to you about that application? A. The first mention or the first part of the conversation between Mr. Rapoport and myself on the Entre Nous application occurred was when Mr. Rapoport was in the office of the bank on some other matter, and this was approximately two or three weeks after my initial meeting with Allan Pollak.

And I asked Mr. Rapoport if he was preparing (959) an application for Allan Pollak, Entre Nous Graphics, because Mr. Pollak had mentioned in our first meeting that he was going to ask Mr. Rapoport to prepare the application.

At several later dates we had conversations about the Entre Nous application—

Q. Did Mr. Rapoport say anything to you about his opinion of the Entre Nous application? A. His opinion of the Entre Nous application was that he was submitting the application to us but was not recommending the Entre Nous loan be made because he did not feel that Allan Pollak was an astute enough businessman to make the business work.

I say those words—these are my words; I am not quoting him because I don't remember exactly what he said, but that was the gist of what he said.

*August McCarthy—for Defendant—Direct*

Q. That was the substance? A. Yes.

\* \* \* \* \*

(960) Q. Now, did you subsequently receive approval, an SBA guarantee on the loan? A. Eventually but in a lesser amount.

Q. Will you describe the approval. Can you recall the approval that you got? A. The eventual approval was, I believe, \$150,000, and it came after an initial decline of that proposal as presented.

Q. Do you recall that there were any restrictions with regard to the total sum of the \$150,000? A. There were. There were restrictions that had to do with funds to be set aside for the purchase of certain (961) specific items of equipment, primarily for the equipping of a printing plant for the card business here in New York City.

Q. Were those funds held in escrow for that purpose? A. Yes. There were approximately \$68,000 held in escrow, and the balance of the \$150,000 was disbursed for general working capital purposes to the business at the time of the loan closing.

Q. Now, 150 less 68 is about \$82,000, is that right? A. Yes. I may be off a few thousand dollars on these figures.

Q. Before the 80,000-some-odd dollars were disbursed to Entre Nous Corporation, did the bank receive a subpoena from the office of the United States Attorney? A. Yes, we did.

Q. Did you contact Mr. Pollak? A. I contacted Mr. Pollak after receiving a subpoena calling for the bank's records on Entre Nous Graphics.

*August McCarthy—for Defendant—Direct*

I told Mr. Pollak that until we had knowledge of what this subpoena represented, that we would not close on the loan which at that time had been approved and had a closing schedule for, I believe, the week we received the (962) subpoena.

Q. After informing Mr. Pollak of this were you present when there was a telephone conversation between counsel for the bank and an Assistant United States Attorney named George Wilson? A. I was present at the telephone conversation, and as I understood it, I was talking to Mr. Wilson.

Q. And what was the substance of that conversation, as you recall it? A. The substance of the conversation was that Mr. Wilson told us that the subpoena that we received for the Entre Nous Graphics bank records was not in any way to be construed a detrimental thing for Entre Nous's credit worthiness, and that there was no reason that he could see that should forestall the bank from closing and disbursing the loan.

Q. Am I correct that the loan was closed and a portion was disbursed and 68,000-some-odd dollars were kept in escrow? A. That is correct.

Q. Now, did Allan Pollak come back to see you about the end of September, 1974, about two months after the loan was disbursed? A. He initially called me, or perhaps I called—(963) no, I called him and he returned my call. He was then in Chicago. He returned my call.

My call to him was that he had missed the monthly interest instalment on the loan, and that there was no money in the account with which to take the interest, and that the

*August McCarthy—for Defendant—Direct*

next month's interest instalment was roughly two weeks away. It had first been brought to my attention that he had missed the month's interest about two weeks after the payment was due.

I called him then and asked him why he had not made the interest payments.

He indicated that he had no funds with which to make the interest payments and asked that I disburse enough funds out of the money held in escrow to meet the arrears interest payment.

Since the money held in escrow was held in terms of approximately so much money for escrow for the machinery and equipment, we had the leeway of disbursing small amounts of those funds without going to the SBA for approval to do so.

Normally our leeway would be 10 per cent of the money in the escrow account.

The discussion with Mr. Pollak led me to understand that he not only didn't have enough money to make the (1964) arrears interest payments but that he would not have enough money from collection of receivables to make the coming interest payment; and so I agreed with Mr. Pollak on the phone that I would disburse approximately \$3000 from the escrow funds to meet those two interest payments, with the understanding that Mr. Pollak would come into the bank the following week and discuss with me what seemed to be a problem that none of us had envisioned, that being the company having no funds. And then he did come in the following week.



*August McCarthy—for Defendant—Direct*

Q. Did he speak with you? A. And he did speak with me the following week, and he brought with him financial statements and projections and lists of items for which the funds had been spent up to now, and that sort of information, together with a proposal that we disburse an additional \$15,000 out of the escrow for working capital.

We discussed this at length, and I told him that I did not see any merit in the bank's doing so because I felt that with the amount of money that had been thus disbursed to that time, without any acquisition of assets of value, in my opinion, that it was only a matter of throwing good money after bad, and that the escrow funds, we could apply them to the balance of the loan payment, (965) or to the balance of the principal of the loan, and keep both the bank and the SBA from suffering any loss on the loan.

Q. So you refused? A. I refused.

He asked me to reconsider.

I told him that I would give it some more thought—I believe he was in on a Friday—that I would give it some more thought, that I would think about it over the weekend and call him the following Monday.

I did so.

I told him that the answer was no.

He asked if there was any appeal to this answer, and I told him that—it may be that he suggested an appeal to the SBA, and I told him he was free to go to the SBA and appeal it if he wanted to, but I told him I felt they would go along with the bank's decision in this matter since that was their normal procedure.

Q. Did you subsequently receive a call from someone at the Small Business Administration? A. The following

*August McCarthy—for Defendant—Direct*

week I was on vacation; Mr. Pollak came in with further information and asked that someone from the bank accompany him to the SBA. He had already been told that no one would; that if he wanted to go to the SBA (966) he would have to do it on his own.

Apparently he did so, because—

Q. Well, you don't know what he did. Did you receive a call from the SBA? A. The week that I—I believe it was the week that I got back from vacation I did receive a call from the SBA.

Q. Do you recall who called you? A. There were a series of telephone conversations with the SBA.

If you will give me a moment—I am trying to think of how the sequence occurred—

The Court: I think we are getting a little afield here. The Court understands from Mr. Pollak's testimony that he ultimately did receive the 15,000; isn't that right?

Mr. Fleming: Yes, that's right.

The Court: Do you dispute the truth of that?

Mr. Fleming: No. If it is stipulated I can just state how it happened.

The Court: The only testimony in the case shows that he got the money.

Mr. Fleming: No, your Honor. The testimony by Mr. Dean, if you will recall, the second witness from the SBA—

The Court: All right, frame another question.

(967) He didn't get the 15,000?

*August McCarthy--for Defendant--Direct*

Mr. Fleming: No, how he got the 15,000.

The Court: All right, ask Mr. McCarthy another question.

*By Mr. Fleming:*

Q. Did you receive a call about the 15,000 from someone at SBA? A. Yes.

Q. What, in substance, did they ask? A. In substance we were asked to reconsider our decision on the \$15,000 out of the escrow fund.

Q. What did you tell them? A. I told them that we would not agree to releasing \$15,000 from the escrow fund—

Q. Is that the end of that conversation? A. Well, the request was that we reconsider, and in the conversation my question to the man at the SBA was: "Why are you asking us to do this since this is not a good credit decision?"

And the answer was, from the man at the SBA, that they had been asked to reconsider this by someone from the U.S. Attorney's Office.

Q. Did you, Mr. McCarthy, during that phone conversation agree to the SBA's request? (968) A. No.

I asked our Legal Department whether this should have any bearing on our decision, and was told that it was a credit decision; and I told them no again.

We received a subsequent phone call. Mr. Pollak was with Mr. Mauch, you will recall, then, and I was asked if there was any way that we could reconsider it, and I said if he could find an additional \$15,000 of collateral that we would advance \$15,000 if it was replaced by an equivalent dollar amount of collateral.

*August McCarthy—for Defendant—Redirect*

Mr. Mauch said that Mr. Pollak at that conversation with him had agreed that he would try and do this, and subsequently we did receive additional collateral of more than \$15,000, and subsequently we thereafter did release \$15,000 out of the escrow funds.

Q. Am I correct the loan was in default in about a month and a half? A. Yes.

Q. Now, Mr. McCarthy, you approved the original loan application at \$185,000, is that correct? A. I did not—are you speaking about me or the bank?

Q. The bank. A. The bank had submitted the \$185,000 loan request,

\* \* \* \* \*

(990) *Redirect Examination by Mr. Fleming:*

Q. Mr. McCarthy, when Mr. Wilson, the Assistant United States Attorney, called in July to say that the grand jury subpoena served on the bank in connection with the Entre Nous loan did not have to affect your judgment on the disbursement, did Mr. Wilson tell you that it was his suspicion that Mr. Pollak had agreed to pay Mr. Rapoport a fee of 10 per cent of the loan for obtaining the loan? A. No, sir.

Q. And if Mr. Wilson had told that that was his suspicion, that is, that Mr. Pollak had agreed to pay (991) Rapoport 10 per cent of the loan for obtaining the loan, would you have disbursed the proceeds? A. No, sir.

\* \* \* \* \*

(1030) The Court: Motion denied.

As far as the last count, I think it was directly material as to whether this defendant in truth and



*Colloquy*

fact ever had a consulting agreement with anybody, and I think as to his credibility on cross examination he could be asked whether he had consulting agreements with anybody, and the way you would approach that with a hostile witness is on a step-by-step basis by asking first American Medical and then going on, and if he had answered truthfully "No," the next question would be, "Who else?" And it is relevant to this case whether he ever had a consulting agreement with anybody, and I don't really think he did. I think he was getting 10 per cent of these loans for either expediting the loans and securing their approval or for pretending to do so. It is not clear from this record whether he ever did a thing. Mr. Rubin was allowed to escape without being asked the important question, and I think it is perfectly admissible, and whether Judge Metzner took it on different grounds, if it is admissible then a lying answer is material where the lie covers the complete question. I am (1031) not concerned with a compound question which has a number of elements in it and where the witness says "No." when the basic answer is "Yes."

Anything like that I wouldn't put up with, but the straight and simple question, whether he ever had a consulting agreement with American Medical Products, is relevant in that trial, and the answer was both false completely and material; at least this jury could so find.

\* \* \* \* \*

*Government's Summation*

(1047) The Court: Maybe he did, and maybe the jury will figure that out for themselves. I think they can observe his demeanor on the stand, that is permissible for them to do, and determine whether he is telling the truth or not.

I am not going to subscribe to the theory a lawyer charged with crime is charged with a different standard than any other citizen. It is (1048) something we hear a lot about because a lot of lawyers have gotten into trouble and they get in trouble the way this fellow does, by rationalizing something, by saying if you call a bribe a fee it is not a bribe, and if you call a payoff a consulting agreement it is not a payoff, and they really get to the point where they fall into misconduct which an ordinary person wouldn't fall into. But that's neither here nor there. I don't hold a lawyer to a higher standard.

\* \* \* \* \*

## (1053) GOVERNMENT'S SUMMATION

\* \* \* \* \*

(1059) Mr. Cutner: What I suggest you may also find is that those companies did not get consulting services (1060) of any substance whatsoever.

What did Entre Nous get for the \$15,000 they were going to pay Jerome Rapoport? What did Smugglers Attie get for the \$25,000 they paid Jerome Rapoport?

What did American Medical Products get for their \$31,000 in cash or \$25,000 in cash, depending upon whose version you accept. What did they get? Nothing. Absolutely nothing.

*Government's Summation*

What did Electrical Precision Meter get for \$39,050? Five hours.

You may not recall, ladies and gentlemen, that the Electrical Precision Meter payment to Mr. Rapoport was on May 24, 1973. Take a look at it. There is the check, May 24, 1973. Since that time, five hours. That's what they got for \$39,000, ladies and gentlemen. Does that sound to you like a consultant?

Take a look at what the record shows about this man's accomplishments and experience in the consulting field.

You have heard that he is an attorney. You have also heard that he worked for two years at the SBA as an attorney adviser. You heard that his experience in the SBA had to do, among other things, with liquidating companies; in other words, handling bankruptcies—an undertaker for (1061) defunct businesses.

Is that, ladies and gentlemen, an undertaker, is that the sort of man you would all want to hire to make your business thrive?

What else did he do? He was a registered representative at a stock brokerage firm. He peddled stock.

Did he write any articles or books? No.

Did he have any affiliations with societies or educational institutions in the consulting field?

No.

He didn't even recognize the name of the trade association in the consulting field. Acme: do you

*Government's Summation*

remember I asked him about Acme? He didn't even know the name.

Any lectures by this man at any school or educational institution about consulting?

No.

His witness, his witness, Mr. McCarthy, says that the only thing he knows about is finding services, finding money, finding financing.

Furthermore, ladies and gentlemen, you have no record of any success on Mr. Rapoport's part. In fact, you heard before you that two of the businesses to which he was supposed to be the consultant failed. The Entre (1062) Nous Corporation went under; Strugglers Attie, they went under. In fact, there is no evidence that financial consultation was even needed by these companies. If anything, they needed other types of consultation.

Just remember that these were companies that just got an SBA loan; they were just getting on their feet, they are paying their debts, they are trying to get running. These are companies if they need anything, they need consultation help of a far different order. They need management consulting help; they need business consulting help; they need people to talk to them about inventory control; they need people to make engineering studies; they need people to really help them out with the running of their business. They have got their financing. What would they need a financial consultant for? That is not at all the type of consulting help, you may find, that they would be looking for.



*Defendant's Summation*

You may also find that the people who get high fees for consulting—fees, by the way, that are not nearly, not nearly as high as the fees this man was charging, not even close—these are people with worldwide reputations; people who lecture, people who write books, people who write articles, people who are known in the profession, people who have done numerous things to make them known throughout (1063) the world in their profession.

Now there was one suggestion a little bit earlier this morning about a possible stroke of genius.

You may find that if this man were paid for any stroke of genius, the only stroke of genius he provided was helping those companies get an SBA loan. There wasn't any other stroke of genius.

\* \* \* \* \*

## (1084) DEFENDANT'S SUMMATION

\* \* \* \* \*

(1119) On June 6, 1974, Allan Pollak walked into the United States Attorney's Office here and told Mr. George Wilson that all of the papers submitted on the loan including this had been submitted—and I quote—"in accordance with the law." That is in Pollak's testimony. He admitted it. He admitted he told Mr. Wilson he wasn't getting anywhere. He admitted he told Mr. Wilson Rapoport wasn't doing anything. He admitted that he told Mr. Wilson that he could have done whatever was going on himself, and he asked for action. And he agreed to wear a wire recorder.

*Motion for Mistrial—Denied*

He also having testified before you that Rapoport told him to make a false statement in May, not only did he go into poor Mr. Wilson and say that this was filed in accordance with law in June, but he went in the grand jury in November—

Mr. Cutner: I object, your Honor. It was very clear that he told Wilson that he was paying Rapoport the fee.

The Court: The jury will recall the evidence.

Mr. Fleming: There is absolutely no evidence to that effect, and I would ask for a mistrial on that (1120) basis, your Honor.

The Court: Motion denied.

I will say, members of the jury, that it is your recollection of the evidence that controls and not anything that I might say about what the evidence shows and certainly not anything that what any attorney says the evidence shows. So you rely on your own collective memories, and if that is inadequate for you, then you can, of course, ask to have it read back. But disregard anything that attorneys say about it unless it accords with your own recollection.

Mr. Fleming: Here it is right here at page 513. My question:

"Q. Do you remember telling Mr. George Wilson, Assistant United States Attorney, on June 6, 1974, that all the papers submitted in support of the loan were in accordance with the law?

"A. Yes.

"Q. And this was one of those papers, isn't that right"—referring to Form 4.

"A. Yes, sir."

June 6.

\* \* \* \* \*

## (1130) GOVERNMENT'S REBUTTAL SUMMATION

(1130) Ladies and gentlemen, this is rebuttal summation. I am supposed to confine my remarks responding to the arguments Mr. Fleming made, and I will try very carefully to do that, your Honor.

Every defendant in this country is entitled to the effective assistance of counsel, but even the very best counsel money can buy can't disentangle this man—

Mr. Fleming: I object to the statement and move for a mistrial.

The Court: I will deny the motion. I (1131) think you have to remember attorneys have a duty to represent defendants to the best of their ability, and all defendants, whether they can afford to pay or not, are entitled to the best legal representation that can be obtained.

I am going to instruct that the reference to money be stricken, and I am counting on your good faith, ladies and gentlemen, when I strike something out, that you will put it out of your minds. It is for that reason I am not granting a mistrial, which I could if I didn't have faith in your ability that you would do it.

Mr. Fleming: I appreciate the compliment.

The Court: Let's get down to the case and proceed.

Mr. Cutner: You may find that nothing can pull Mr. Rapoport out of the hopeless tangle of lies that he has proven for himself.

*Government's Rebuttal Summation*

Mr. Fleming has suggested some things to you. I suggest to you that he can't have it both ways. He says why doesn't the government talk about the government's witnesses, why do we spend all the time talking about Mr. Rapoport?

(1132) There is a very good reason for that, as Mr. Fleming himself said. The issue here is what did Mr. Rapoport think, what is his intention, what did he understand the agreement to be? I suggest to you it is perfectly sensible to talk about what this man says when the issue at hand is what was his understanding, so you can't have it both ways.

Now, Mr. Fleming likes to talk about Allan Pollak, and again you can't have it both ways. First he lands on Pollak with about 25 body blows and then he tells you Pollak ought to behave like a professional government agent, experienced at conducting investigations.

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## CHARGE TO THE JURY

(1141)

• • • • •

(1155) Now, the testimony of Mr. Jerome Rapoport is before you and you must determine how far it is credible. The deep personal interest which every defendant has in the result of his case should be considered in determining the credibility of his testimony. You are instructed that interest may create a motive to testify falsely. The greater the interest, the stronger is the temptation, and the interest of a defendant is of a character possessed by no other witness and, therefore, a matter which may affect the weight which should be given to that testimony.

However, that is a matter entirely for you to determine, using your common sense and considering all of the evidence in this case.

• • • • •

(1156) You have also been told that what may have happened in other proceedings involving Mr. Rapoport is to play no part in your deliberations on the charges before you. Unfortunately, you have been told in testimony that was uncalled for, and which I had stricken out, that a particular result allegedly occurred in a prior trial. This was unfortunate for several reasons.

(1157) First of all, the prior trial involved, with the exception of count 1, which is Entre Nous, different charges and different evidence, and thus most of the case which you are called upon to decide today is being presented to a jury for the first time.

*Charge to the Jury*

Secondly, in cases of a jury deadlock there is no record of the vote, and an estimate of the vote is frequently based upon hearsay or misinformation or just plain wishful thinking on the practice some people have to tell other people what they think they want to hear.

\* \* \* \* \*

(1168) As to the first element, you must consider whether the defendant made or caused to be made a false statement in an application to the bank for a loan.

I instruct you that a false statement means a statement that was untrue when made and was then known to be untrue by the person making it or causing it to be made.

In this context a half truth may be a false statement as long as the person making or causing the half truth to be made knew at that time that the statement was less than the whole truth.

\* \* \* \* \*

(1175) On the issue of knowledge and intent the government introduced evidence of Mr. Rapoport's transactions (1176) with American Medical Products Corporation and with the principals of that company. I want to call your attention very carefully to the fact that Mr. Rapoport is not charged with any wrongdoing with respect to those transactions. You may not consider those transactions themselves as evidence or proof of wrongdoing on the counts charged in this indictment. However, you may consider the testimony as to American Medical Products as evidence of what are claimed to be so-called similar acts, and you may consider it solely in your deliberation on the issue as to whether the defendant acted knowingly and

*Charge to the Jury*

wilfully—that is to say, with guilty knowledge and intent—with respect to the counts charged in this indictment.

• • • • •

(1190) As for the second element, whether the matters about which it is charged that he testified falsely were (1191) material to the matters then under inquiry by that trial, it is necessary for the government to prove beyond a reasonable doubt that the testimony was capable of influencing the jury on the issue before it. However, in order to be material testimony need not be dispositive of the inquiry at the prior trial.

The prosecution contends that Jerome Rapoport gave knowingly false testimony when he testified in his own defense at that trial in October. In essence, the prosecution charges that Mr. Rapoport knowingly gave false testimony when he started under cross examination that he did have a consulting agreement with American Medical Products Corp.

The American Medical Products loan was not charged as an offense in the October trial. If you are convinced beyond a reasonable doubt that Mr. Rapoport did give false testimony in this regard, you will then consider whether the government has proved beyond a reasonable doubt whether in fact he did have a consulting agreement with American Medical Products was material.

The test for materiality in a false swearing case is whether the allegedly false testimony was capable of influencing the jury on the issue before it.

*Charge to the Jury*

(1192) The issue before the jury in the October trial was whether Mr. Rapoport had caused a false loan application to be filed in connection with the Entre Nous Corporation. A false statement such as claimed here is not material unless it is established to your satisfaction beyond a reasonable doubt that a truthful answer would have been of sufficient importance to the inquiry concerning his activities with Entre Nous so that as a minimum further fruitful questions would have taken place.

Unless you are convinced beyond a reasonable doubt whether Rapoport had a consulting agreement with American Medical Products was capable of influencing the jury in determining whether he was guilty of wrongdoing in connection with the Entre Nous application, or that a contrary answer would have been of sufficient importance, as a matter of proof, to have resulted in further fruitful inquiry about his consulting activities generally, then the question was not material and the answer wasn't material and you are obligated to return a verdict of not guilty on this count without regard to whether his testimony that he had a consulting agreement with that company was true or knowingly false.

. . . . .

(1197) Of course, taking high fees is not in itself illegal, nor is it illegal in the context of this case to get paid in advance or to get paid in currency. Of course, the entire circumstances under which any business is transacted may have a bearing on the intentions of those doing so. If you find the fees were fixed or determined or handled in an unusual or clandestine fashion, this may or may not have



*Renewal of Motion for Mistrial*

a bearing on the issue of whether the fees paid were, in fact, consulting fees or not.

This matter, like all factual questions, is one certainly for your determination. You, and you alone, determine the weight of the evidence and decide the (1198) reasonable inference to be drawn from them.

\* \* \* \* \*

(1206) Mr. Fleming: Now, Judge, there are two other things:

I do move for a mistrial for two things Mr. Cutner said in his summation. The last of the two things was when he said, to my recollection, "The best lawyer that money can buy."

The Court: That was really very overwhelming rhetoric, Mr. Cutner.

Mr. Cutner: I am sorry.

The Court: I am sure if the truth were known, counsel is not here because he is the best lawyer that money can buy, and he is not here solely for money. You will probably find if you came to the bottom of it that his fees are very modest and reasonable.

Mr. Fleming: I think it is particularly prejudicial in this case, your Honor, because this case is about money. If I were representing an indigent defendant—

The Court: I think it is bad, but when I was watching the demeanor of the jury when I spoke on this subject to them, they can and will conscientiously follow (1207) my instructions and put it out of their minds.

It's pretty hard sometimes to get the milk back into the bottle that people spill out through over-eagerness, but I

*Renewal of Motion for Mistrial*

think this jury will give you a fair shake. I don't think it's a matter which requires any mistrial.

Mr. Fleming: And, your Honor, I also request a mistrial because during my summation when I was arguing the statement that Pollak had made to Mr. Wilson during this interview on June 6th, Mr. Cutner got up and said that there was no question that Allan Pollak had told George Wilson that he was paying a fee for the loan, and there is absolutely no evidence in this record that Allan Pollak ever told George Wilson that, at least no evidence that I can recall.

The Court: My memory is that Pollak testified to that, but perhaps I am wrong. I think I told them their recollection controls and put the discussion out of their minds, and I don't think that error rises to the magnitude of causing a mistrial; so I will deny your motion on both of those grounds.

I must say, Mr. Cutner, there is no purpose in impugning the good faith of your adversary. If you want to, take the position that the defendant is bad, but your adversary is a great fellow—which I really think he is.

\* \* \* \* \*

(1222) (At 12:10 p.m. the following note was received from the jury:

"We request the transcripts of Seymour, Samarel, Raymond and Rapoport's testimony on Count 9.")

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*Portions of Testimony Requested Read to Jury*

(2:30 p.m., in the courtroom, in the absence of the jury.)

The Court: Are we all agreed on the page numbers to be read?

Mr. Cutner: Yes, your Honor.

The Court: Have you placed the court reporter in possession of a copy?

Mr. Cutner: Yes, your Honor.

The Court: Very well.

Mr. Reporter, don't read any colloquy or any matter of that sort if you can avoid it.

Bring in the jury.

(The jury entered the courtroom.)

The Court: Good afternoon, members of the jury:

Our court reporter will now read to you that testimony which has been requested.

(Portions of testimony requested read to the jury.)

The Court: Members of the jury, you may withdraw (1223) to your juryroom and resume your deliberations.

(At 3:30 p.m. the jury returned to the juryroom to resume deliberations.)

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*Verdict*

(4:05 p.m. In the courtroom, in the presence of the jury.)

The Court: Mr. Clerk, would you ascertain, please, if the jurors have reached a verdict.

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: We have, your Honor.

The Clerk: How do you find the defendant as to Count 1?

The Foreman: We find the defendant guilty on Count 1.

The Clerk: Count 2?

The Foreman: Guilty.

The Clerk: Count 3?

The Foreman: Guilty.

The Clerk: Count 6?

The Foreman: Guilty.

The Clerk: Count 7?

The Foreman: Guilty.

The Clerk: Count 9?

The Foreman: Guilty.

• • • • •



## DEFENDANT'S REQUESTS TO CHARGE

## REQUEST No. 8

*Good Faith a Complete Defense*

Now you must understand that ignorance of the law is no excuse for criminal action, nor does the fact that a defendant acted pursuant to his understanding of the law's requirements relieve him from criminal responsibility.

However, if a man honestly and in good faith acts upon his understanding of the law, he cannot be convicted of a crime which involves willful and unlawful intent even if his understanding of the law is erroneous.

Thus, if you find after a consideration of all of the evidence in the case that Mr. Rapoport believed in good faith that there was no obligation to disclose his agreements to the Banks, then the prosecution has failed to prove its case against Mr. Rapoport and you must return a verdict of not guilty.

Good faith on Mr. Rapoport's part, even if erroneous, is a complete defense to the charges in this indictment. A man does not commit a crime if he makes a mistake, or acts inadvertently. The question is whether he acted in good faith.

Put another way, you may not convict Mr. Rapoport of any of the crimes charged in this indictment unless you are convinced on all of the evidence beyond a reasonable doubt that Mr. Rapoport acted in bad faith and with an evil purpose.

Adopted from the instruction of Judge Gagliardi in *United States v. Mitchell*.

*Minutes of Sentence*

## REQUEST No. 13

*Credibility Defendant's Testimony*

I told you at the outset that the law does not require a defendant in a criminal case to testify or present any evidence in his own behalf. When, as here, a defendant, does testify, it is your function as juror to assess his credibility in the same manner as you assess the credibility of any other witness. You will recall, I instructed you that one factor to be considered in judging credibility was any interest a witness may have in the outcome of the trial. Obviously, every defendant has a personal interest in the outcome of the case.

In appraising his credibility you may take the fact of interest into consideration. However, it by no means follows that simply because a person has a substantial interest in the result he is not capable of telling a straightforward or truthful story. It is for you to decide to what extent, if at all, his interest has affected his testimony.

## MINUTES OF SENTENCE, JUNE 10, 1976

(1227) The Court: For sentence.

Mr. Cutner: The government is ready.

Mr. Fleming: Mr. Rapoport is ready.

The Court: Mr. Fleming, is there any reason sentence should not be imposed at this time?

Mr. Fleming: No, there is not, your Honor.

The Court: Mr. Rapoport, is there any reason sentence should not be imposed at this time?

*Minutes of Sentence*

The Defendant: No, your Honor.

The Court: Mr. Fleming, you may be heard in your client's behalf and may present information in mitigation of sentence.

Mr. Fleming: Your Honor, it is difficult for me ever to speak on sentence, and it is difficult in this case for me to present evidence in mitigation of the order sought.

The case has been an unusual one from my point of view because of the nature of the proof of the case. It (1223) was essentially, throughout the three trials, your Honor, a question of what agreement had been reached, in the first case, two parties, and in the case before your Honor, Mr. Rapoport and several other parties, and whether the agreement which had been reached was one to assist in obtaining of a loan or whether it was as Mr. Rapoport claimed, something to the contrary.

In the end, that was resolved against Mr. Rapoport, and there is no question, your Honor, in terms of sufficiency of the evidence, that the evidence is more than sufficient to justify that jury term.

As I say, what has always struck me as unusual about the case and puzzling about the case, not in terms of prosecution, but just in terms of the case itself, it was almost a contractual case; what did people agree to do?

Jerry has, since I have known him, always had the same explanation as to what his state of mind was. It remains the same today. I know that is never a statement that is offered in mitigation of sentence, but the truth insofar as his state of mind was concerned.

*Minutes of Sentence*

It is in many respects, it may be perceived a unique explanation of the situation, but it has always been.

In terms of punishment, your Honor, I obviously (1229) ask for as much consideration as the Court can give. I think there are a couple of things that can be considered in terms of punishment. I don't know if they can be actually considered as mitigating factors. I think that the three trials, while obviously warranted since the third resulted in a conviction, certainly were punishment of a sort.

The year has not been easy for Mr. Rapoport and it has not been inexpensive.

In terms of rehabilitation, I would like to think, your Honor, and no one can ever warrant this, but I would like to think that now he really is somewhat older and especially now, because he has had this experience and has established as a real estate property investor and promoter of tennis facilities in Albany, the kind of thing in this indictment is in his past.

Obviously, there can be no guarantee of that.

In terms of deterrence, I can only say, your Honor, that I again point to the very difficult emotional experience of one year which included three criminal trials. Put another way, waiting on three occasions for a jury to return with or without a verdict.

The Court: I don't understand that aspect of it, Mr. Fleming. I can only attribute it to superior (1230) advocacy, because I thought that even Pollak was believable on the trial that I had, and I think on the other count that the testimony was probably a little better because he did not have all the counts in the prior trials, and that may be a factor, but it looked to me as if the guilt was more



*Minutes of Sentence*

than adequately shown without too much credibility difficulties.

Mr. Fleming: If your Honor please, I said I would not challenge the sufficiency of the evidence in this case. If I can speak very briefly to that, I think the case was different with just Allen Pollak than it was with—

The Court: Pollack was corroborated by tapes in part.

Mr. Fleming: And impeached by tapes, in part.

The Court: Yes, that is true.

Mr. Fleming: So just speaking as an advocate, I don't think it was superior advocacy, I think the quality of the case was entirely different where the witness was Allen Pollack and the concentration was on the witness Allen Pollack. The third trial when the government finally brought the case with the similar acts as counts to the indictment, and added the perjury counts, I think may well have been a different case, but I do not (1231) quarrel with your Honor's assessment, or with the sufficiency of the evidence. It is certainly there.

With regard to the third trial, the third trial was our fault. We went to trial for a third time. Mr. Rapoport just was unwilling to dispose of the case on a felony basis. He does not practice law, but he prides himself on his license, and he was unwilling to dispose of the case on a felony basis even after two hung juries and the government I think, Mr. Cutner, will confirm and there is no criticism whatsoever, was unwilling to dispose of the case on a misdemeanor basis.

I don't think the fact under those circumstances Mr. Rapoport going to trial again in view of all the background, certainly should be any factor against his interest.

*Minutes of Sentence*

I can't say much more—

The Court: I don't so regard it, Mr. Fleming.

Mr. Fleming: I would like to say that I think this experience in the long run will be worthwhile for Mr. Rapoport, that it has substantially punished him in and of itself as an experience. That's what I do say, your Honor, but obviously I cannot warrant that.

I do ask under all the circumstances, this being a first criminal conviction, and in view of what is, (1232) I think, the emotional trauma of three trials within the course of a year, that your Honor be as lenient as your Honor feels that your Honor can be in these circumstances.

The Court: All right.

Mr. Rapoport, do you have anything you wish to say in your own behalf or do you wish to present any information in mitigation of sentence?

Mr. Rapoport: Your Honor, for the last year and a half it has been a nightmare for me. Unfortunately, it is a reality, it is not a nightmare.

I would like to ask you to be merciful with me, but I have never asked anybody for mercy, I don't know how to ask. I would like to beg you to be lenient with me, but I don't know how to beg.

I believe in democracy, I believe in the judicial process. A jury of my peers have found me guilty, and I await your imposition of sentence.

The Court: Does the government have any comments or recommendations?

Mr. Cutner: I have a couple of comments, your Honor.

*Minutes of Sentence*

First, on the question of the three trials, I submit that is something that your Honor ought not to consider in connection with the sentence. The reason is, (1233) your Honor, that I suggest that the fact that there were three trials resulted in a substantial part on account of the defendant's own false testimony.

This defendant was convicted of perjury and in addition your Honor had an opportunity to observe him on the stand and assess how far his testimony was credible, but I submit the verdicts, or rather, the hung juries in the two prior trials, must have rested in substantial part on the false testimony that Mr. Rapoport gave in those two trials. So I think the fact that he has undergone three trials, and I don't dispute that that is a substantial burden, but I just think that that ought not to be considered in light of the circumstances in this case.

Mr. Fleming makes a point in his memorandum concerning the grants of immunity. I would only say in that regard I think the evidence showed that the people that were granted immunity in this case were very much victims and probably more victims than they were—

The Court: I already expressed myself about the immunity, but that is something which the executive branches of the government has the power to do, and because of all the strictures placed upon the detection and prosecution of crime, it is often necessary to use informers. Here they handed out immunity like aspirin.

(1234) I am going to say that maybe some banker along the road in this case was not entirely honest. If I remember the evidence correctly, one of these clients was referred to Mr. Rapoport by a banker. Isn't that so?

*Minutes of Sentence*

Mr. Cutner: More than one, your Honor.

The Court: Yes, and an accountant, if you call that fellow an accountant. But that is neither here nor there.

The government has the right to do that. It is not something this Court can treat as a substantial factor in sentencing. They gave out aspirin. They gave immunity out like aspirin.

Mr. Cutner: The last thing, your Honor, that is just a little bit difficult for me to swallow, is the statement that Mr. Rapoport's statement, may well be true at least in his own mind. I think on all the evidence in this case, and in addition what has subsequently come to light, before the New York Stock Exchange, a kickback scheme that was discovered there involving Mr. Rapoport, I think—

The Court: I know nothing of that. And I don't know that I should properly consider any such matter. That is not before me. If he did anything crooked in the Stock Exchange, that is not involved in this matter at all, Mr. Cutner.

(1235) Mr. Cutner: I am not suggesting it is before you, only that it reflects on state of mind, and had it been known it might have been something used on cross examination at the trial.

In any event, I think in light of the proof in this case, that that statement that Mr. Rapoport—Mr. Rapoport's statement that his explanation—

Mr. Fleming: That was my statement.

Mr. Cutner: Or Mr. Fleming's statement.

Mr. Fleming: It expresses my feeling as I expressed it to the Court.

Mr. Cutner: It is difficult to accept, your Honor.

The Court: I believe the defendant was validly convicted and that he is guilty. I believe sentence has to be



*Minutes of Sentence*

imposed and will be imposed based upon the crimes charged and proven here and the total record before me. There is no need to go to extraneous matters.

I want to tell you first, Mr. Rapoport, that the judgment of conviction to be imposed today is a final judgment, that you have the absolute right to take an appeal within ten days from the date of today, and, furthermore, that if you without funds, the Court would appoint an attorney to present you on appeal.

(1236) I gather you are not indigent?

The Defendant: I don't have funds, your Honor.

The Court: You don't have funds?

The Defendant: No. I am completely illiquid.

The Court: The record seems to suggest that you have some real estate investments, and I had a letter from your partner in one of these matters where he tells me what a fine fellow you are and how much he relies on you as a dependable hard worker, that is Mr. Cammerotta.

The Defendant: That's correct.

He is an equal partner with me in a tennis complex in Albany, New York. That complex in the first year lost close to \$100,000.

The Court: If you are in a position to make an affidavit of indigency, the Court will assign counsel for your appeal. Have you discussed this with him, Mr. Fleming?

Mr. Fleming: An appeal, yes, your Honor, and, your Honor, Mr. Rapoport's statement was that he lacked liquidity. I don't know if your Honor heard that. He was not denying his investment. I just wanted to make sure you heard that.

The Court: Are you prepared to take his appeal or what do you want me to do?

*Minutes of Sentence*

Everybody in this circuit ought to take an (1237) appeal.

Mr. Fleming: We will take an appeal, Judge.

The Court: Why didn't you tell me that?

You understand your rights in that regard?

The Defendant: My right to appeal, your Honor?

The Court: Yes.

The Defendant: I have a right to appeal.

The Court: It is my duty to make certain you understand that.

Now, I want to say one or two other things about this matter:

This case presents a mysterious aspect to this Court. I have already expressed my view about bankers and accountants, too, for that matter, who send a borrower to you, as the evidence seems to indicate, that you developed a reputation as a person able to obtain expeditious approval of Small Business Administration loans.

Implicit in that, and implicit in the whole factual context of this case, is some suggestion that either you were a total fraud or these borrowers and gave them nothing and took their money or you did in fact have a contact with some corrupt person in the Small Business Administration who was able to assist you by expediting (1238) these loans, and it appears to me that sophisticated bankers and relatively sophisticated accountants believed that.

The whole Small Business Administration must be rotten to the core if they would lend money to a fellow like Goggi, and I take Goggi as an example because you were acquitted on that count. But if it is so this is a matter of concern to the Court and to the public.

*Minutes of Sentence*

The case is somewhat reminiscent of U.S. v. Zweig, where Judge Frankel imposed sentence and sentenced a direct invitation to Mr. Zweig which Mr. Zweig declined to tell us in effect "how come."

I don't know whether you can do that in this case and I don't want to go as far as the Court did in the Zweig case, although what the Court did was affirmed or held to be lawful by the Court of Appeals in this circuit.

In imposing sentence, I have to recognize that there is a mystery which has not been cleared up here. After this trial is all over it is not known yet whether you are a fixer in the Small Business Administration who can get a loan approved or whether you are merely a fellow who took money under false pretenses.

The Defendant: I think I can—

Mr. Fleming: Wait. The Judge hasn't finished yet.

(1239) The Court: I lay that matter on the table. I would say further, I really do believe that you lied to me about some immaterial matters on trial here. However, I am not making a finding beyond a reasonable doubt that you are a liar, and I am not considering that in imposing sentence.

The charges are serious. The separate charge of Count 9 is particularly a serious charge, because we depend on truthful testimony to litigate issues in this courthouse.

The Fifth Amendment protects, nobody has to get on the stand and testify, but once he does, he ought to tell the truth, and the Court has to regard false statements under oath as representing serious matters. I don't like to treat an attorney differently than anyone else, I generally do not do so. However, when an attorney testifies falsely it

*Minutes of Sentence*

is a shame on the whole judicial system and so the Court has to regard Count 9 as serious.

These are the bases upon which I am imposing sentence. I will enlodge you, pending your appeal. I will continue you on your bail.

Did you want to say something that I interrupted?

Mr. Fleming, I will not interrupt your (1240) conference with Mr. Rapoport, and if he wants to say something that I interrupted him from saying, he can. However, I do not require him to say anything at this time. After his appeal is adjudicated, if his conviction stands, he has the full rights under Rule 35 which I am sure you can explain to him fully.

So, I do not require him to say anything at this particular point in time, unless he wishes to. However if I did cut him off, it is not my intention to interrupt a man, so he can speak if he wants to.

The Defendant: Your Honor, I would like to clear up the mystery for you, and the common knowledge in the U.S. Attorney's office that the government during the period that I was consulted, that they encouraged all the banks throughout the country to make as many loans as they possibly could.

The lending criteria for these loans was substantially inadequate. Anybody, all they had to do was just to go in and they could get a loan without a semblance of worth. This was the nature of the times at that time.

The government itself--what I mean by "the government," the Small Business Administration, took a forward movement and contacted the banks and tried to generate sales, let us say, in the Small Business Administration.



*Minutes of Sentence*

(1241) My coming into play, I would like to say, I think there is a third alternative your Honor may have overlooked, and it is the fact that when these borrowers came to me, potential borrowers, and I told them that I would only consult with them, some of them, you know, inwardly they may have said, "Well, they didn't care what I was saying at that time." They may have been truthful on the stand and say, "Well, I know you mean you are going to help me with the loan or something like that, but I could not put myself in their position."

I know that I tried to operated under a certain *modus operandi* to try to avoid me being here right now, because I did not want to have anything to do with, as I said, with the loans.

I think that is the whole story.

The Court: All right. If there is nothing further, the Court will now impose sentence.

On Counts 1, 2, 3, 6 and 7, you are sentenced to a term of two years on each count, concurrent.

As to Count 9, which is the false declaration count, representing a separate crime at a separate time and place, the Court imposes an additional sentence of one year consecutively to the sentence imposed on the prior counts.

(1242) The Court is not fining you in addition to a prison term, although that course was recommended by the probation office. The reason I am not doing it is I believe you have placed, or put to a substantial expense by the retrials that you have had.

The Court will grant you a stay of execution, pending an appellate finding, and you are continued on the existing bail arrangements.

The court will be in recess.

175a

**Government's Exhibit 1**

**Entre Nous Loan Application**



## SMALL BUSINESS ADMINISTRATION

## APPLICATION FOR LOAN

(See Instructions on Page 2)

Pre-acceptance

SBA LOAN NUMBER

4/11/74-G &amp;

1. APPLICANT (Show official name without abbreviations unless an abbreviation is a part of the official name. For proprietor or partnership, show name(s) followed by d/b/a and trade name used if any)

Name Entre Nous Graphics Inc.		Street 565 Fifth Avenue		
City New York	County New York	State New York	ZIP Code 10017	Tele. No. (212) 661-4080
Employer's I.D. Number (36-2776448)	Date of Application 4/29/74	Amount of Loan Requested \$185,000	Maturity Requested 7 years	
Type of Business Greeting Card Manufacturer		Date Established July, 1973	Number of Employees (Including subsidiaries and affiliates). 7	
Franchise <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, Submit Copy		<input checked="" type="checkbox"/> Existing Business <input type="checkbox"/> New Business	At Time of Application 10	
			If Loan is Approved	

## 2. Use of Proceeds:

Land Acquisition	\$	Acquisition and/or repair of machinery and equipment	\$
New Building or plant construction	\$	Working Capital Inventory & Carry A/R	\$ 155,000
Debt Payment Trade	\$ 30,000	Other	\$
		Total	\$ 185,000

## 3 SUMMARY OF COLLATERAL OFFERED (Attach detailed list of collateral offered - See Item 8(16), page 2)

	Cost	Net Book Value (Cost Less Depreciation)	Present Liens Or Mortgage Balance, If Any
Land and Buildings			
Business machinery and equipment			
Business furniture and fixtures			
Accounts receivable			
Inventory			
Other (specify)			

## 4. AS ADDITIONAL SECURITY, PAYMENT OF THE LOAN WILL BE GUARANTEED BY:

Name and Address (Include ZIP Code and Social Security Number of Guarantors)  
(Each principal must submit a signed personal balance sheet as of the same date as the applicant's balance sheet)

Net Worth Outside  
Of Interest In  
Applicant Company



Allan & Lynda Pollak  
550 Sheridan Square  
078-24-8243, 319-36-2129

\$ 116,494.00

5. DISCLOSURE OF SPECIAL INFORMATION REGARDING PRINCIPALS: (a) List below the names of any SBA employees or SBA advisory board members who are related by blood, marriage or adoption to, or who have any present or have had any past, direct or indirect, financial interest in or in association with, the applicant, or any of its partners, officers, directors or principal stockholders (such interest to include any direct or indirect financial interest in any other business entity or enterprise); (b) When the proprietor, or any partner, officer, director, or person who holds 10 percent or more of the applicant's stock is an investor in a licensed Small Business Investment Company, or a proposed investor in an SBIC which has filed for a license, detailed information shall be submitted with this application; and (c) Likewise, if any person identified in (b) above, or their spouse, is an employee of the U.S. Government (including members of the armed forces), detailed information shall be submitted with this application. (Use separate sheet if necessary).

If none, check here: ☒ (a) ☒ (b) ☒ (c)

Name and Address (Include ZIP Code)	Details of Relationship or Interest

6. MANAGEMENT (1) Names of all owners, officers, directors or partners and their annual compensation, including salaries, fees, withdrawals, etc. (complete all columns). (2) Names and compensation of all employees receiving in excess of \$17,500 annually. (3) All stockholders having a 20% or more interest in applicant (complete all columns except annual compensation). (4) Hired manager.

Name (List first, middle, maiden & last.) (If no middle name, so state) Home Address (Include ZIP Code)	Office Held	Annual Compensation	Percent Ownership	Personal Guaranty Offered (Yes or No)	Insurance Carried for Benefit of Applicant*
Allan Pollak	President	\$20,000	100%	Yes	Yes
Lynda Pollak	Secretary	-0-	-0-	Yes	No

\*Life insurance on owner(s) or principal(s) will be required ONLY when specifically included as a condition of an approved loan.

7. RECENT EFFORTS TO OBTAIN CREDIT (For Direct Loan Applicants Only): The SBA is authorized to make loans to business enterprises only when the financial assistance is not otherwise available on reasonable terms. SBA is also empowered to make loans in cooperation with banks or other lending institutions through agreements to participate on an immediate or guaranty basis. Therefore, applicant must furnish the information required below regarding efforts made within 60 days preceding the filing of this application to obtain credit from banks or other sources. Letters declining to extend credit as well as declining to participate with SBA must be obtained from the following lending institutions: (a) The applicant's bank of account; and (b) If the amount of the loan applied for is in excess of the legal lending limit of the applicant's bank or in excess of the amount that the bank normally lends to any one borrower, then a refusal from a correspondent bank or from any other lending institution whose lending capacity is adequate to cover the loan applied for; (c) Letters from two banks are required if applicant is located in a city with a population in excess of 200,000. These letters must contain date of application, amount of loan requested and reasons for refusal, and be attached to this application.

CREDIT INFORMATION - Applicant expressly authorizes disclosure of all information submitted in connection with this application and any resulting loan to the financial institution agreeing below to participate in such loan or, if none, to its bank(s) of account and (insert name of other financial institution if desired).

Will you participate with SBA in the loan requested? ☒ Yes ☐ No. If "Yes" institution shall execute  
Application For Participation or Guaranty Agreement at bottom of page 4

PAGE 1 OF 4



## 9. INSTRUCTIONS TO APPLICANT

**Direct Loans** - Submit one copy of this form and all supporting documents to SBA.

**Participation Loans** - Submit two copies of this form and all supporting documents to the participating bank.

All attachments must be signed and dated.

- (1) SBA Form 912 must be submitted in quadruplicate by the proprietor, if a sole proprietorship; by each partner, if a partnership; by each officer, director, and each holder of 20 percent or more of the voting stock, if a corporation; and other person, including a hired manager, who has authority to speak for and commit the borrower in the management of the business. In addition, applicant must submit a signed copy of SBA Form 641, "Request for Counseling," with the application.
- (2) Attach to application a brief description and history of the business.
- (3) Comment briefly on the benefits the business will receive if the loan is obtained.
- (4) Attach a schedule on all installment debts, contracts, notes and mortgages payable, showing to whom payable, original amount, original date, present balance, rate of interest, maturity date, monthly payment, security and whether current or delinquent. (Amounts on this schedule should agree with the figures on the applicant's financial statement.) Indicate by an asterik (\*), items to be paid by loan proceeds and reason for paying same.
- (5) If construction is involved, state the estimated cost, source of any additional funds which may be required to complete the construction and whether temporary financing for the construction is available. Furnish preliminary plans and specifications with the application. Final plans and specifications must be submitted for SBA/Lender approval prior to commencement of construction if loan is approved.
- (6) Where loan funds will be used for construction purposes, and the contract or subcontracts are in excess of \$10,000, the Applicant must execute and submit with the application "Applicant's Agreement of Compliance," SBA Form 601, which is a non-discrimination agreement issued pursuant to Executive Order 11246.
- (7) Where purchase of machinery and equipment is involved, furnish a detailed list of items to be purchased and the estimated cost thereof.
- (8) For each person listed in "Management" give brief description of education, technical training, employment and business experience.
- (9) Attach balance sheets for the past 3 fiscal years.
- (10) Attach balance sheet dated within 90 days from date of filing application with aging of accounts receivable and payable.
- (11) Attach Profit and Loss Statement for past three fiscal years and for as much of current year as is available. (If operating statements are not available, explain why not and enclose corresponding Federal income tax returns in lieu thereof.) If past earnings do not show ability to repay proposed loan and existing obligations, attach an estimated profit and loss statement for at least one full year.

- (12) Reconciliation of net worth shall be provided for items (9) and (10) above.
- (13) If new business, furnish earnings projection (estimated profit and loss statement) for at least one full year.
- (14) Personal Financial Statements must be submitted for proprietors, each partner, each officer, and each stockholder with 20% or more ownership. (For this purpose the enclosed SBA Form 413 may be used.)
- (15) Details must be given of any pending litigation, whether applicant be plaintiff or defendant or any litigation that involves management of the applicant.
- (16) A description of collateral is required. Attached SBA Forms may be used for this purpose. SBA/Bank may require submission of an appraisal.
- (17) SUBSIDIARIES AND AFFILIATES - List on an attached sheet the names and addresses of (1) all concerns that may be regarded as subsidiaries of the applicant, including concerns in which the applicant holds a controlling (but not necessarily a majority) interest, and (2) all other concerns that are in any way affiliated, by stock ownership or otherwise, with the applicant. The applicant should comment briefly regarding the trade relationship between the applicant and such subsidiaries or affiliates, if any, and if the applicant has no subsidiary or affiliate, a statement to this effect should be made. Signed and dated balance sheets, operating statements and reconciliation of net worth must be submitted for all subsidiaries and affiliates.
- (18) PURCHASE AND SALES RELATIONS WITH OTHERS - Does applicant buy from, sell to, or use the services of, any concern in which an officer, director, large stockholder, or partner of the applicant has a substantial interest?  
☐ Yes ☒ No If "Yes" give names of such officers, directors, stockholders, and partners, and names of any such concern on attached sheet.
- (19) RECEIVERSHIP - BANKRUPTCY - Has applicant or any officer of the applicant or affiliates or any other concern with which such officer has been connected ever been in receivership or adjudicated a bankrupt?  
☐ Yes ☒ No If "Yes" give names and details on separate sheet.

(20) Previous Government Financing - List assistance received, or requested and refused, and any pending applications.

Name of Agency or Department (including SBA)	Amount Approved or Requested	Date of Approval or Request	Present Balance	Status (Current, Delinquent, Maturity Accelerated)
NONE				

BEST COPY AVAILABLE

9. **POLICY AND REGULATIONS CONCERNING REPRESENTATIVES AND THEIR FEES** An applicant for a loan from SBA may obtain the assistance of any attorney, accountant, engineer, appraiser or other representative to aid him in the preparation of his application to SBA; however, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title abstracts, etc. SBA will allow the payment of reasonable fees or other compensation for services performed by such representatives on behalf of the applicant.

There are no "authorized representatives" of SBA, other than our regular salaried employees. Payment of any fee or gratuity to SBA employees is illegal and will subject the parties to such a transaction to prosecution.

SBA Regulations (Part 103, Sec. 103.13-5(c)) prohibit representatives from charging or proposing to charge any contingent fee for any services performed in connection with an SBA loan unless the amount of such fee bears a necessary and reasonable relationship to the services actually performed; or to charge any fee which is deemed by SBA to be unreasonable for the services actually performed; or to charge for any expenses which are not deemed by SBA to have been necessary in connection with the application. The Regulations (Part 122, Sec. 122.19) also prohibit the payment of any bonus, brokerage fee or commission in connection with SBA loans.

In line with these Regulations SBA will not approve placement or finder's fees for the use or attempted use or influence in obtaining or trying to obtain an SBA loan, or fees based solely upon a percentage of the approved loan or any part thereof.

Fees which will be approved will be limited to reasonable sums for services actually rendered in connection with the application or the closing, based upon the time and effort required, the qualifications of the representative and the nature and extent of the services rendered by such representative. Representatives of loan applicants will be required to execute an agreement as to their compensation for services rendered in connection with said loan.

It is the responsibility of the applicant to set forth in the appropriate section of the application the names of all persons or firms engaged by or on behalf of the applicant. Applicants are required to advise the SBA Field Office in writing of the names and fees of any representatives engaged by the applicant subsequent to the filing of the application.

Any loan applicant having any question concerning the payment of fees, or the reasonableness of fees, should communicate with the Field Office where the application is filed.

10. **NAMES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PARTIES.** The names of all attorneys, accountants, appraisers, agents, and all other parties (whether individuals, partnerships, associations or corporations) engaged by or on behalf of the applicant (whether on a salary, retainer or fee basis and regardless of the amount of compensation) for the purpose of rendering professional or other services of any nature whatever to applicant, in connection with the preparation or presentation of this application to Bank in which SBA may participate or any loan to applicant as a result of this application; and all fees or other charges or compensation paid or to be paid therefor or for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the applicant, together with a description of such services rendered or to be rendered, are as follows:

Name and Address (Include ZIP Code)	Description of Services Rendered and to be Rendered	Total Compensation Agreed to be Paid*	Compensation Already Paid*
NONE			

\* Enter specific dollar amounts. "Unknown," "Undetermined" or other imprecise terms are not sufficient.



11. AGREEMENT OF NONEMPLOYMENT OF SBA PERSONNEL. In consideration of the making by SBA to applicant of all or any part of the loan applied for in this application, applicant hereby agrees with SBA that applicant will not, for a period of two years after disbursement by SBA to applicant of said loan, or any part thereof, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an officer, attorney, agent, or employee of SBA and (b) as such, shall have occupied a position or engaged in activities which SBA shall have determined, or may determine, involve discretion with respect to the granting of assistance under the Small Business Act, or Economic Opportunity Act or said Acts as they may be amended from time to time.

12. CERTIFICATION, I hereby certify that:

- (a) The Applicant has read SBA Policy and Regulations concerning representatives and their fees (#9 above) and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for.
- (b) The applicant has not paid or incurred any obligation to pay to any Government Employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. has been solicited by any such employee, the applicant agrees to report such information to the Office of Security and Investigations, SBA, 1441 L Street, N. W., Washington, D. C. 20416.
- (c) All information contained above and in exhibits attached hereto are true and complete to the best knowledge and belief of the applicant and are submitted for the purpose of inducing SBA to grant a loan or to participate in a loan by a bank or other lending institution to applicant. Whether or not the loan herein applied for is approved, applicant agrees to pay or reimburse SBA for the cost of any surveys, title or mortgage examinations, appraisal fees, or other expenses incurred by non-SBA personnel with consent of applicant.

Applicant, covenants, promises, agrees and gives herein the Assurance as required by 13 CFR 112.8 and CFR 113.4 that in connection with which SBA may make, or in which SBA may participate or guaranty as a result of this application, it will comply with the provisions of Parts 112 and 113 of SBA Regulations and Title VI of Civil Rights Act of 1964 to the extent that said Parts 112 and 113 are applicable, and further agrees that in the event it fails to comply with said applicable Parts 112 and 113, SBA may call, cancel, suspend or suspend in whole or in part the financial assistance provided or to be provided by SBA, and that SBA, or the applicant, may take any other action that may be deemed necessary or appropriate to effectuate the nondiscrimination requirements including the right to seek judicial enforcement of the terms of this ASSURANCE OF COMPLIANCE. These requirements include the grounds of race, color or national origin by recipients of federal financial assistance, including but not limited to employment, require the submission of appropriate reports and access to books and records; these requirements are applicable to all transactions in interest.

ENTRE NOUS GRAPHICS INC.

(Individual, general partner, trade name or corporation)

Corporate Seal

Attest

(Title)

Secretary

By

Title President

Date Signed:

April 29, 1984

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for an applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the SBA, or for the purpose of obtaining money, property, or anything of value, under the Small Business Act, as amended, shall be punished under Section 10(a) of the Small Business Act, as amended, by fine of not more than \$5,000 or by imprisonment for not more than two years, or both.



13 APPLICATION FOR PARTICIPATION OR GUARANTY AGREEMENT

Bank Transit No.

(For use only by bank or other financial institution)

We propose to make a (check one):

☒ Guaranteed loan Bank Share \_\_\_\_\_ % SBA Share \_\_\_\_\_ %

☐ Immediate participation loan with bank to make and service, Bank Share \_\_\_\_\_ % SBA Share \_\_\_\_\_ %

To the Applicant named on page 1 of this application. We hereby make application for the type of participation agreement checked above subject to the following loan conditions (use separate sheet if necessary):

(1) Terms and Conditions:

(a) Term of loan \_\_\_\_\_ years. Monthly payments, including lender's interest at \_\_\_\_\_ % per annum, simple, in the amount of \$ \_\_\_\_\_.

(b) Collateral and lien position.

(c) Guarantors

(d) Insurance: Life, Hazzard, Federal Flood.

(e) Other

- (2) Participation: SBA prefers that a lender participate beyond the total existing debts owed the lender which are to be refinanced through the loan. Existing obligations owed to the lender may be refinanced through the loan, in accordance with the minimums set forth below, only when the lender certifies in writing that such debt is in good standing (payments and other obligations handled substantially as agreed) and is satisfactory in all respects. Lender's minimum share of a loan shall be:
- (a) Guaranty - 10% for SBA loans and as currently applicable for Economic Opportunity Loans.
  - (b) Immediate Participation - 25% provided the legal lending limit permits; 10% for Economic Opportunity Loans.
- (3) Interest Rate: Lender may establish its own interest rate provided it is legal and reasonable, subject to SBA's approval. If lender's interest exceeds 8 percent per annum (simple) on a guaranteed loan SBA will pay accrued interest to the date of purchase on its guaranteed portion at the simple annual rate of 8 per cent without any future adjustment for unpaid accrued interest in excess of this effective rate. Lender may use an add-on interest provided (i) State law permits; (ii) the face of the SBA Note shows the principal amount of the actual dollar amount disbursed or to be disbursed to the borrower under the loan and all other SBA documents show this amount of principal; (iii) interest is converted to a simple annual interest rate and such converted rate is shown on all SBA documents other than the note. (The add-on interest rate should be specified on the Note, if necessary, to comply with State law; otherwise show the simple interest rate.)
- (4) Comments of the Bank, which may be in the form of a letter or memorandum, shall:
- (a) include an evaluation of ability of Applicant's management, its past record of handling obligations, your expression as to what the loan will do for applicant, applicant's repayment ability, and other pertinent information. If Applicant or any of its officers have been adjudicated a bankrupt or connected with a receivership or been involved in any criminal, or other legal proceedings, give details. Also include an appraisal of the collateral if available and your evaluation of its adequacy to secure the loan.
  - (b) state whether any officer, director or substantial stockholder of Bank has a financial interest in Applicant and, if so, the extent thereof;
  - (c) indicate whether Applicant, its subsidiaries or affiliates, is indebted to the Bank, the amount, terms, and how secured, including any guaranties, and whether applicant's loans have been met substantially as agreed. (Include all such loans made during the past 12 months, showing high and low credit by months. If no loans were made during the period, so state.)
- (5) Without the participation of SBA to the extent applied for we would not be willing to make this loan. In our opinion, the financial assistance applied for is not otherwise available on reasonable terms.

180a

**Government's Exhibit 2**

**Electrical Precision Meter Loan  
Application (Page 3)**



9. POLICY AND REGULATIONS CONCERNING REPRESENTATIVES AND THEIR FEES An applicant for a loan from SBA may obtain the assistance of any attorney, accountant, engineer, appraiser or other representative to aid him in the preparation of his application to SBA; however, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, abstracts, etc. SBA will allow the payment of reasonable fees or other compensation for services performed by such representatives on behalf of the applicant.

There are no "authorized representatives" of SBA, other than our regular salaried employees. Payment of any fee or gratuity to SBA employees is illegal and will subject the parties to such a transaction to prosecution.

SBA Regulations (Part 103, Sec. 103.13-5(c)) prohibit representatives from charging or proposing to charge any contingent fee for any services performed in connection with an SBA loan unless the amount of such fee bears a necessary and reasonable relationship to the services actually performed; or to charge any fee which is deemed by SBA to be unreasonable for the services actually performed; or to charge for any expenses which are deemed by SBA to have been necessary in connection with the application. The Regulations (Part 122, Sec. 122.19) also prohibit the payment of any commission, brokerage fee or commission in connection with SBA loans.

In line with these Regulations SBA will not approve placement or finder's fees for the use or attempted use or influence in obtaining or trying to obtain an SBA loan, or fees based solely upon a percentage of the approved loan or any part thereof.

Fees which will be approved will be limited to reasonable sums for services actually rendered in connection with the application or the closing, based upon the time and effort required, the qualifications of the representative and the nature and extent of the services rendered by such representative. Representatives of loan applicants will be required to execute an agreement as to their compensation for services rendered in connection with said loan.

It is the responsibility of the applicant to set forth in the appropriate section of the application the names of all persons or firms engaged by or on behalf of the applicant. Applicants are required to advise the SBA Field Office in writing of the names and fees of any representatives engaged by the applicant subsequent to the filing of the application.

Any loan applicant having any question concerning the payment of fees, or the reasonableness of fees, should communicate with the Field Office where the application is filed.

10. NAMES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PARTIES. The names of all attorneys, accountants, appraisers, agents, and all other parties (whether individuals, partnerships, associations or corporations) engaged by or on behalf of the applicant (whether on a salary, retainer or fee basis and regardless of the amount of compensation) for the purpose of rendering professional or other services of any nature whatever to applicant, in connection with the preparation or presentation of this application to Bank in which SBA may participate or any loan to applicant as a result of this application; and all fees or other charges or compensation paid or to be paid therefor or for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the applicant, together with a description of such services rendered or to be rendered, are as follows:

Name and Address (Include ZIP Code)	Description of Services Rendered and to be Rendered	Total Compensation Agreed to be Paid*	Compensation Already Paid*
Harold Wapnick 2024 East 18th Street Brooklyn, N.Y. 11229	Preparation of applications	\$-0-	Annual Retainer

\* Enter specific dollar amounts. "Unknown," "Undetermined" or other imprecise terms are not sufficient.



11. AGREEMENT OF NONEMPLOYMENT OF SBA PERSONNEL. In consideration of the making by SBA to applicant of all or any part of the loan applied for in this application, applicant hereby agrees with SBA that applicant will not, for a period of two years after disbursement by SBA to applicant of said loan, or any part thereof, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an officer, attorney, agent, or employee of SBA and (b) as such, shall have occupied a position or engaged in activities which SBA shall have determined, or may determine, involve discretion with respect to the granting of assistance under the Small Business Act, or Economic Opportunity Act or said Acts as they may be amended from time to time.

12. CERTIFICATION, I hereby certify that:

(a) The Applicant has read SBA Policy and Regulations concerning representatives and their fees (#9 above) and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for.

(b) The applicant has not paid or incurred any obligation to pay to any Government Employee or special Government employee an fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. has been solicited by any such employee, the applicant agrees to report such information to the Office of Security and Investigations, SBA, 1141 L Street, N. W., Washington, D. C. 20416.

(c) All information contained above and in exhibits attached hereto are true and complete to the best knowledge and belief of the applicant and are submitted for the purpose of inducing SBA to grant a loan or to participate in a loan by a bank or other lending institution to applicant. Whether or not the loan herein applied for is approved, applicant agrees to pay or reimburse SBA for the cost of any surveys, title or mortgage examinations, appraisals, etc., performed by non-SBA personnel with consent of applicant.

(d) The applicant hereby covenants, promises, agrees and gives herein the Assurance as required by 13 CFR 112.8 and CFR 113.4 that in connection with any loan to applicant which SBA may make, or in which SBA may participate or guaranty as a result of this application, it will comply with the requirements of Parts 112 and 113 of SBA Regulations and Title VI of Civil Rights Act of 1964 to the extent that said Parts 112 and 113 are applicable to such financial assistance, and further agrees that in the event it fails to comply with said applicable Parts 112 and 113, SBA may call, cancel, terminate, accelerate repayment or suspend in whole or in part the financial assistance provided or to be provided by SBA, and that SBA, or the United States Government may take any other action that may be deemed necessary or appropriate to effectuate the nondiscrimination requirements in said Parts 112 and 113, including the right to seek judicial enforcement of the terms of this ASSURANCE OF COMPLIANCE. These requirements prohibit discrimination on the grounds of race, color or national origin by recipients of federal financial assistance, including but not limited to employment practices, and require the submission of appropriate reports and access to books and records; these requirements are applicable to all transferees and successors in interest.

Electical Precision Meter Corp.

(Individual, general partner, trade name or corporation)

Corporate Seal

Attest

(Title)

Secretary

By

President

Title

Date Signed: 3/14

, 19 73

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for an applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the SBA, or for the purpose of obtaining money, property, or anything of value, under the Small Business Act, as amended, shall be punished under Section 16(a) of the Small Business Act, as amended, by fine of not more than \$5,000 or by imprisonment for not more than two years, or both.

182a

**Government's Exhibit 3**

**Goggi International Loan Application  
(Page 3)**

9. **POLICY AND REGULATIONS CONCERNING REPRESENTATIVES AND THEIR FEES** An applicant for a loan from SBA may obtain the assistance of any attorney, accountant, engineer, appraiser or other representative to aid him in the preparation of his application to SBA; however, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title abstracts, etc. SBA will allow the payment of reasonable fees or other compensation for services performed by such representatives on behalf of the applicant.

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It is the responsibility of the applicant to set forth in the appropriate section of the application the names of all persons or firms engaged by or on behalf of the applicant. Applicants are required to advise the SBA Field Office in writing of the names and fees of any representatives engaged by the applicant subsequent to the filing of the application.

Any loan applicant having any question concerning the payment of fees, or the reasonableness of fees, should communicate with the Field Office where the application is filed.

10. **NAMES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PARTIES.** The names of all attorneys, accountants, appraisers, agents, and all other parties (whether individuals, partnerships, associations or corporations) engaged by or on behalf of the applicant (whether on a salary, retainer or fee basis and regardless of the amount of compensation) for the purpose of rendering professional or other services of any nature whatever to applicant, in connection with the preparation or presentation of this application to Bank in which SBA may participate or any loan to applicant as a result of this application; and all fees or other charges or compensation paid or to be paid therefor or for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the applicant, together with a description of such services rendered or to be rendered, are as follows:

Name and Address (Include ZIP Code)	Description of Services Rendered and to be Rendered	Total Compensation Agreed to be Paid*	Compensation Already Paid*
Sheldon D. Horowitz 327 Palmer Terrace Mamaroneck, N.Y. 10543	Accounting	Annual Retainer	Annual Retainer

\* Enter specific dollar amounts. "Unknown," "Undetermined" or other imprecise terms are not sufficient.



11. AGREEMENT OF NONEMPLOYMENT OF SBA PERSONNEL. In consideration of the making by SBA to applicant of all or any part of the loan applied for in this application, applicant hereby agrees with SBA that applicant will not, for a period of two years after disbursement by SBA to applicant of said loan, or any part thereof, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an officer, attorney, agent, or employee of SBA and (b) as such, shall have occupied a position or engaged in activities which SBA shall have determined, or may determine, involve discretion with respect to the granting of assistance under the Small Business Act, or Economic Opportunity Act or said Acts as they may be amended from time to time.

12. CERTIFICATION, I hereby certify that:

- (a) The Applicant has read SBA Policy and Regulations concerning representatives and their fees (#9 above) and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for.
- (b) The applicant has not paid or incurred any obligation to pay to any Government Employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. has been solicited by any such employee, the applicant agrees to report such information to the Office of Security and Investigations, SBA, 1441 L Street, N. W., Washington, D. C. 20416.
- (c) All information contained above and in exhibits attached hereto are true and complete to the best knowledge and belief of the applicant and are submitted for the purpose of inducing SBA to grant a loan or to participate in a loan by a bank or other lending institution to applicant. Whether or not the loan herein applied for is approved, applicant agrees to pay or reimburse SBA for the cost of all surveys, title or mortgage examinations, appraisals, etc., performed by non-SBA personnel with consent of applicant.
- (d) The applicant hereby covenants, promises, agrees and gives herein the Assurance as required by 13 CFR 112.8 and CFR 113.4 that in connection with any loan to applicant which SBA may make, or in which SBA may participate or guaranty as a result of this application, it will comply with the requirements of Parts 112 and 113 of SBA Regulations and Title VI of Civil Rights Act of 1964 to the extent that said Parts 112 and 113 are applicable to such financial assistance, and further agrees that in the event it fails to comply with said applicable Parts 112 and 113, SBA may call, cancel, terminate, accelerate repayment or suspend in whole or in part the financial assistance provided or to be provided by SBA, and that SBA, or the United States Government may take any other action that may be deemed necessary or appropriate to effectuate the nondiscrimination requirements in said Parts 112 and 113, including the right to seek judicial enforcement of the terms of this ASSURANCE OF COMPLIANCE. These requirements prohibit discrimination on the grounds of race, color or national origin by recipients of federal financial assistance, including but not limited to employment practices, and require the submission of appropriate reports and access to books and records; these requirements are applicable to all transferees and successors in interest.

Goggi International, Ltd.

(Individual, general partner, trade name or corporation)

Corporate Seal

Attest

Charles P. Goggi  
Secretary

By

Richard Goggi

Title

President

Date Signed

November 26

1973

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for an applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the SBA, or for the purpose of obtaining money, property, or anything of value, under the Small Business Act, as amended, shall be punished under Section 16(a) of the Small Business Act, as amended, by fine of not more than \$5,000 or by imprisonment for not more than two years, or both.



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**Government's Exhibit 4**

**Smugglers Attic Loan Application  
(Page 3)**

**POLICY AND REGULATIONS CONCERNING REPRESENTATIVES AND THEIR FEES** An applicant for a loan from SBA may obtain the assistance of any attorney, accountant, engineer, appraiser or other representative to aid him in the preparation of his application to SBA; however, such representation is not mandatory. In the event a loan is approved, the services of an attorney may be necessary to assist in the preparation of closing documents, title abstracts, etc. SBA will allow the payment of reasonable fees or other compensation for services performed by such representatives on behalf of the applicant.

There are no "authorized representatives" of SBA, other than our regular salaried employees. Payment of any fee or gratuity to SBA employees is illegal and will subject the parties to such a transaction to prosecution.

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It is the responsibility of the applicant to set forth in the appropriate section of the application the names of all persons or firms engaged by or on behalf of the applicant. Applicants are required to advise the SBA Field Office in writing of the names and fees of any representatives engaged by the applicant subsequent to the filing of the application.

Any loan applicant having any question concerning the payment of fees, or the reasonableness of fees, should communicate with the Field Office where the application is filed.

**NAMES OF ATTORNEYS, ACCOUNTANTS, AND OTHER PARTIES.** The names of all attorneys, accountants, appraisers, agents, and all other parties (whether individuals, partnerships, associations or corporations) engaged by or on behalf of the applicant (whether on a salary, retainer or fee basis and regardless of the amount of compensation) for the purpose of rendering professional or other services of any nature whatever to applicant, in connection with the preparation or presentation of this application to Bank in which SBA may participate or any loan to applicant as a result of this application; and all fees or other charges or compensation paid or to be paid therefor or for any purpose in connection with this application or disbursement of the loan whether in money or other property of any kind whatever, by or for the account of the applicant, together with a description of such services rendered or to be rendered, are as follows:

Name and Address (Include ZIP Code)	Description of Services Rendered and to be Rendered	Total Compensation Agreed to be Paid*	Compensation Already Paid*
FEINBLATT, BLONDER & SEYMOUR CERTIFIED PUBLIC ACCOUNTANTS 310 MADISON AVENUE NEW YORK, N. Y. 10017	Preparation of Application	NONE	Annual Retainer

\* Enter specific dollar amounts. "Unknown," "Undetermined" or other imprecise terms are not sufficient.

1. **AGREEMENT OF NONEMPLOYMENT OF SBA PERSONNEL.** In consideration of the making by SBA to applicant of all or any part of the loan applied for in this application, applicant hereby agrees with SBA that applicant will not, for a period of two years after disbursement by SBA to applicant of said loan, or any part thereof, employ or tender any office or employment to, or retain for professional services, any person who, on the date of such disbursement, or within one year prior to said date, (a) shall have served as an officer, attorney, agent, or employee of SBA and (b) as such, shall have occupied a position or engaged in activities which SBA shall have determined, or may determine, involve discretion with respect to the granting of assistance under the Small Business Act, or Economic Opportunity Act or said Acts as they may be amended from time to time.

2. **CERTIFICATION,** I hereby certify that:

- (a) The Applicant has read SBA Policy and Regulations concerning representatives and their fees (#9 above) and has not paid or incurred any obligation to pay, directly or indirectly, any fee or other compensation for obtaining the loan hereby applied for.
- (b) The applicant has not paid or incurred any obligation to pay to any Government Employee or special Government employee any fee, gratuity or anything of value for obtaining the assistance hereby applied for. If such fee, gratuity, etc. has been solicited by any such employee, the applicant agrees to report such information to the Office of Security and Investigations, SBA, 1441 L Street, N. W., Washington, D. C. 20416.
- (c) All information contained above and in exhibits attached hereto are true and complete to the best knowledge and belief of the applicant and are submitted for the purpose of inducing SBA to grant a loan or to participate in a loan by a bank or other lending institution to applicant. Whether or not the loan herein applied for is approved, applicant agrees to pay or reimburse SBA for the cost of any surveys, title or mortgage examinations, appraisals, etc., performed by non-SBA personnel with consent of applicant.
- (d) The applicant hereby covenants, promises, agrees and gives herein the Assurance as required by 13 CFR 112.8 and CFR 113.4 that in connection with any loan to applicant which SBA may make, or in which SBA may participate or guaranty as a result of this application, it will comply with the requirements of Parts 112 and 113 of SBA Regulations and Title VI of Civil Rights Act of 1964 to the extent that said Parts 112 and 113 are applicable to such financial assistance, and further agrees that in the event it fails to comply with said applicable Parts 112 and 113, SBA may call, cancel, terminate, accelerate repayment or suspend in whole or in part the financial assistance provided or to be provided by SBA, and that SBA, or the United States Government may take any other action that may be deemed necessary or appropriate to effectuate the nondiscrimination requirements in said Parts 112 and 113, including the right to seek judicial enforcement of the term of this ASSURANCE OF COMPLIANCE. These requirements prohibit discrimination on the grounds of race, color or national origin by recipients of federal financial assistance, including but not limited to employment practices, and require the submission of appropriate reports and access to books and records; these requirements are applicable to all transferees and successors in interest.

SMUGGLERS ATTIC, INC.

(Individual, general partner, trade name or corporation)

Corporate Seal

Attest

(Title)

Secretary

By

Title

Date Signed:

President

March 19

, 19 73

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for an applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the SBA, or for the purpose of obtaining money, property, or anything of value, under the Small Business Act, as amended, shall be punished under Section 16(a) of the Small Business Act, as amended, by fine of not more than \$5,000 or by imprisonment for not more than two years, or both.



**Government's Exhibit 12**

**Tape of July 18 Conversation  
(Page 2)**

Linda Pollak: I'm saying he can have a salary.

Allan Pollak: Okay, okay.

Jerome Rapoport: Do you understand what I'm saying?

Allan Pollak: I do.

Linda Pollak: You're saying we can't have any.

Jerome Rapoport: Not at all.

Linda Pollak: Then we're in trouble.

Jerome Rapoport: Here's the loan agreement. Basically they just fill in the terms . . . I just want to make sure that . . . Well the reason why I'm showing you this basically is the fact that, so that you don't have to read it at the closing.

Allan Pollak: Well can I just talk about the loan agreement for a second because it says.

Jerome Rapoport: Let me just show you the rest of the papers.

Allan Pollak: Okay.

Jerome Rapoport: This is a compensation agreement where they ask you if you paid anybody to get the loan, and naturally you haven't. Okay, I'm there only as your friend. I don't want to see anyone fucking me with this loan.



*Government's Exhibit 12*

Allan Pollak: Okay . . . you said what?

Jerome Rapoport: I don't wanna be paid. I don't want anybody to re-surface this matter, preparation or helping you with this loan. I don't want to be classified in that category.

Allan Pollak: Okay, can I talk about the loan agreement now? . . . "Use of proceeds. Borrower will use the proceeds of the loan solely for the purpose set forth in the authorization." Now the authorization indicates that \$70,900.00 is going to be used for machinery.

Jerome Rapoport: That's modification, I'll go into that.

Allan Pollak: That's all I want to hear from you.

Jerome Rapoport: That's why you're here, to prepare.

Linda Pollak: Would you repeat what you just said again?  
This legal stuff is going back and forth.

Jerome Rapoport: When I explain.

Allan Pollak: You're going to explain to her.

Jerome Rapoport: When I explain, it's going to be crystal clear.

Linda Pollak: Okay.

Jerome Rapoport: Because I don't leave anything open. . . .  
The loan, the amount of the loan is for \$150,000.00. Use of proceeds for the supplies of it, for the purchase of machinery and equipment is approximately \$70,900.00. Part is for \$50,000.00 to purchase inventory (inaudible) and the balance for working capital.

**Government's Exhibit 15**

**Tape of August 13 Conversation**

Jerome Rapoport: Hello.

Allan Pollak: Jerry?

Jerome Rapoport: Yes Sir.

Allan Pollak: Allan.

Jerome Rapoport: Good morning Allan.

Allan Pollak: It's not a very good morning for me, Jerry.

Jerome Rapoport: Why is that Allan?

Allan Pollak: Because I just received a subpoena.

Jerome Rapoport: Ah huh.

Allan Pollak: And I don't even know what this is about.  
I'm very, very concerned and upset about this  
Jerry. Why the hell am I being subpoenaed?

Jerome Rapoport: I have no idea. Must be in reference to  
your case.

Allan Pollak: I beg your pardon.

Jerome Rapoport: Must be in reference to the case, Allan.

Allan Pollak: Well, what, what problem does the case have,  
Jerry? This is very confusing and frightening  
to me . . . I, when I spoke to Gus McCarthy  
yesterday, he gave me the, what do they call  
these things, the codes and the titles, and I  
have a list of what it means. Code 2 is aiding  
and abetting a criminal offense. What the hell  
have I done with a criminal offense?

*Government's Exhibit 15*

Jerome Rapoport: I don't know.

Allan Pollak: Code 371 is conspiracy to commit fraud against the government and commit crimes. 1000, do you know all these things?

Jerome Rapoport: No.

Allan Pollak: All right, 1001 is a false statement to an agency of the Government. 1014 is a false statement to a bank which is an FDIC bank.

Jerome Rapoport: Right.

Allan Pollak: 645 is a false statement to the SBA or, overvaluing securities . . . I'm just wondering if this doesn't have something to do, Jerry, with the fact that, you know, I signed this paper that I didn't pay anybody.

Jerome Rapoport: Very possible.

Allan Pollak: Well, what do I do Jerry? What do I tell them when they ask me if I have made arrangements with anybody to pay?

Jerome Rapoport: Well did you pay anything to anybody for preparing those applications?

Allan Pollak: I paid \$661, in gold coins Jerry.

Jerome Rapoport: No you didn't.

Allan Pollak: What do you mean "no I didn't." Well if they, look Jerry, if they ask me: "do you have any kind of arrangement with anybody to pay them," what do I say?

Jerome Rapoport: It all depends for what Allan?

*Government's Exhibit 15*

Allan Pollak: Well for the purpose, for the securing of an SBA loan, I assume, look, I'm only, I'm anticipating what these guys are going to ask me.

Jerome Rapoport: Right.

Allan Pollak: Now if they have me down for a criminal offense, aiding and abetting a criminal offense, I don't know what criminal offense it is. And the only thing I could think of is the fact that I had not put your name down on the application.

Jerome Rapoport: Right.

Allan Pollak: And I had every intention of giving you \$15,000 . . . now, you know, what do I tell them when they ask me this?

Jerome Rapoport: Well Allan, let me say this, that, (A) the question is, that when I first retained it, I told you that I did not want anything for preparing the application. I didn't want, you know, for helping you with the application. And, my function was strictly as a consultant to the company. I didn't want to have anything to do, you know with the application itself. Now, I would, I would tell them the truth, basically.

Allan Pollak: If they ask me, have you make arrangements with any . . .



*Government's Exhibit 15*

Jerome Rapoport: Don't forget, that was, I have the right to charge you up to \$15,000. If I wanted to, I could take less for my services, depending on what I wanted to do to consult with you.

Allan Pollak: Are you sure that I'm not going to get myself into a lot of trouble by telling them that I'm paying you \$15,000 for a consulting fee.

Jerome Rapoport: Well, Allan, you're allowed to, if I rendered the consulting service. That's why I wanted to render consulting service to you.

Allan Pollak: Well we don't have anything in writing to this effect Jerry.

Jerome Rapoport: They're not going to believe it anyway so what the hell difference does it make. Even if you tell them orally our agreement you think they're going to believe it. Nobody believes it. Everybody is pessimistic. That's what I'm telling you.

Allan Pollak: Well.

Jerome Rapoport: Don't I know, they're not going to believe it.

Allan Pollak: Alright, I'm telling you Jerry right now, I, I, I spoke to my lawyer, I woke him up when I got served with this thing and I am not going to perjure myself in any way, shape or form.

*Government's Exhibit 15*

Jerome Rapoport: I don't want you to, Allan, I don't want you to, not at all, not, not, Allan, not in the slightest. The only thing is this, you're a big boy. At the meeting we had here, I told you, I did not want anything for helping you with the application and I'm not, you know, getting paid for that. If you want me for a consultant, I'd gladly be a consultant, my fee for consulting was up to \$15,000.00.

Allan Pollak: That's not absolutely true, Jerry.

Jerome Rapoport: What's not true.

Allan Pollak: You said that, you said you're cut was 10% of the loan. So it's not up to \$15,000.00 and we had originally gone into . . .

Jerome Rapoport: Right, up to that, up to that amount rather.

Allan Pollak: No, I want to be sure, that you and I are on the same wave length.

Jerome Rapoport: Right, you're right, you're right.

Allan Pollak: Originally, we went into 350.

Jerome Rapoport: Up to 10% of the loan value.

Allan Pollak: Right.

Jerome Rapoport: You're right, forgive me, I boiled it down, because the loan you know, was down to \$150,000.

Allan Pollak: Well Jerry I got, I got to put myself on record with you at this point in time, that I am not, I'm scared to death you know.

Jerome Rapoport: I don't blame you, I mean.

*Government's Exhibit 15*

Allan Pollak: I'm petrified with things like this, and I am going in there and if they ask me my shoe size is, I'm going to give it to them and if they ask me the last time I screwed my wife I'm going to tell them.

Jerry Rapoport: Absolutely.

Allan Pollak: I'm not going to hold back one single thing Jerry, I can't.

Jerome Rapoport: Alright, I agree with you.

Allan Pollak: Because if they know enough about this situation to even contact me, God knows what else they know and I'm going to tell them everything they ask me.

Jerome Rapoport: Absolutely.

Allan Pollak: So, you know, I, at this point I'm looking out for me and nobody else Jerry, I can't afford to worry about what's going to happen, other than what's going to happen to me.

Jerome Rapoport: Allan, I agree with you, I'm the first one to tell you, I agree with you.

Allan Pollak: OK, babe.

Jerome Rapoport: Now, you know, and I told you, but what do is I want you to go in there and I want you to tell them the truth.

Allan Pollak: Alright.

*Government's Exhibit 15*

Jerome Rapoport: Which is very important and also I at the same time you got to, you know, tell them, I mean, in all fairness, tell them our relationship too, I mean I was retaining you to do some work also.

Allan Pollak: Yes, that's true, that's true, alright Jerry.

Jerome Rapoport: We have a mutual relationship, there's no doubt about it. The question is this, the way I look, the way I look, the way I look at it, is, is this way. You're not supposed to pay anybody for preparing these applications, so they're going to ask you, in other words, you, if you're paying anybody, giving anybody. Maybe it's Cary, did I, did you, I told you not to pay him anything for being a finder. Did you pay him any money?

Allan Pollak: No. I did not.

Jerome Rapoport: Okay, so there is no problem (inaudible) because I was wondering maybe it's him. I have no idea.

Allan Pollak: No, I didn't pay Cary, because Cary called me on the telephone and said he didn't want anything.

Jerome Rapoport: Alright, can you hold on, my other phone, one second.  
(Jerome Rapoport on other phone)

Allan Pollak: Jerry, I'm, I'm, I'm very upset, I'll tell you, I don't know what's causing this thing. I can only tell you that that this whole SBA situation has turned into an absolute nightmare.



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*Government's Exhibit 15*

Jerome Rapoport: Well, Allan, I wouldn't worry about it, the, I would definitely think about it.

Allan Pollak: What do you mean you would definitely think about it?

Jerome Rapoport: I mean I definitely, go over everything, tell them everything and, you know, get your facts straight, I certainly would discuss it with your lawyer.

Allan Pollak: Jerry, are you kidding, that's the first thing I'm going to do.

Jerome Rapoport: Yeah.

Allan Pollak: I told you, I woke him up and I'm going to see him today.

Jerome Rapoport: Right.

Allan Pollak: As a matter of fact I'm on my way down to him now, but Jerry I . . .

Jerome Rapoport: Are you going to appear in the Southern District, is that what it is?

Allan Pollak: I got the paper right here in front of me. Yeah . . . The thing that concerns me more than anything else Jerry is that, you know, I never done anything wrong in my life.

Jerome Rapoport: Yeah.

*Government's Exhibit 15*

Allan Pollak: And here all of a sudden I'm in front of the Grand Jury, and my attorney said to me, just in passing, he said Allan when you walk out of that Grand Jury, you're going to be a changed man. It's also probably going to be the longest urination on record because I am petrified Jerry I'm not about to go to jail for anybody.

Jerome Rapoport: I agree with you Allan.

Allan Pollak: Okay Jerry.

Jerome Rapoport: Allan 100% but on the same token all I ask you to do is to be fair to me.

Allan Pollak: Well Jerry, I'm going to tell them, you know, fair to you is telling the truth as far as I'm concerned. If you're home free, and I don't know of anybody, you know fair to you, doesn't mean anything, what do they want me for?

Jerome Rapoport: I have no idea.

Allan Pollak: You know I— It looks to me like I'm the defendant here.

Jerome Rapoport: Well, they may, for all I know, they may want me for conspiracy with you to evade the laws, do I know a million and one things.

Allan Pollak: Alright Jerry.

*Government's Exhibit 15*

Jerome Rapoport: You, do you know what I mean, I don't know, how do I know they want to serve me with a subpoena also.

Allan Pollak: I thought you said, they served you.

Jerome Rapoport: No, well they haven't yet, they'll serve it today or tomorrow, I got to make an arrangement for it. Well what I'm trying to tell you, what I'm trying to say is this, that, don't forget anything, do you know what I mean by that Allan? I mean, when you were here, I don't know, we discussed it, I told you specifically that my fee arrangement is not with the applications, I am hired as a consultant to the company, I made that absolutely 100% clear, and at the same time, that is good for you also because you signed a statement.

Allan Pollak: I know, and that's one of the things my attorney asked me did you sign a statement wherein you say that there is no funds given to anybody for the purpose of this loan.

Jerome Rapoport: Right, exactly, that's exactly right, hold on one second.

(Jerome Rapoport on other phone)

So that's basically the way.

Allan Pollak: All right Jerry, I'm not going to keep you.

Jerome Rapoport: Yes, do you understand what I'm saying, in other.

Allan Pollak: Look you just got finished telling me, they're not going to believe that anyway.

*Government's Exhibit 15*

Jerome Rapoport: But you got to tell them anyway the truth.

Allan Pollak: Well I intend to tell them the truth.

Jerome Rapoport: Do you know what I'm saying, that's the whole problem Allan, nobody believes it anyway, well what can you do.

Allan Pollak: Alright Jerry.

Jerome Rapoport: I'll, let's see what happens, talk to you soon.

Allan Pollak: Alright Jerry.

Jerome Rapoport: Thanks.

Allan Pollak: Pye Bye.

Jerome Rapoport: Bye Bye.



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